

No. 12509

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United States  
Court of Appeals  
For the Ninth Circuit.

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THOMAS E. HAYES, on Behalf of Himself and  
All Others Similarly Situated,  
Appellants,  
vs.

UNION PACIFIC RAILROAD CO., a Corpora-  
tion, and DINING CAR EMPLOYEES UN-  
ION LOCAL 372, a Voluntary Unincorporated  
Labor Organization; JAMES G. BARKDOLL,  
as District Director of Said Local 372 in the  
District of Los Angeles, State of California,  
Appellee.

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Transcript of Record

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Appeal from the United States District Court  
Northern District of California,  
Southern Division.

JUN 16 1950



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

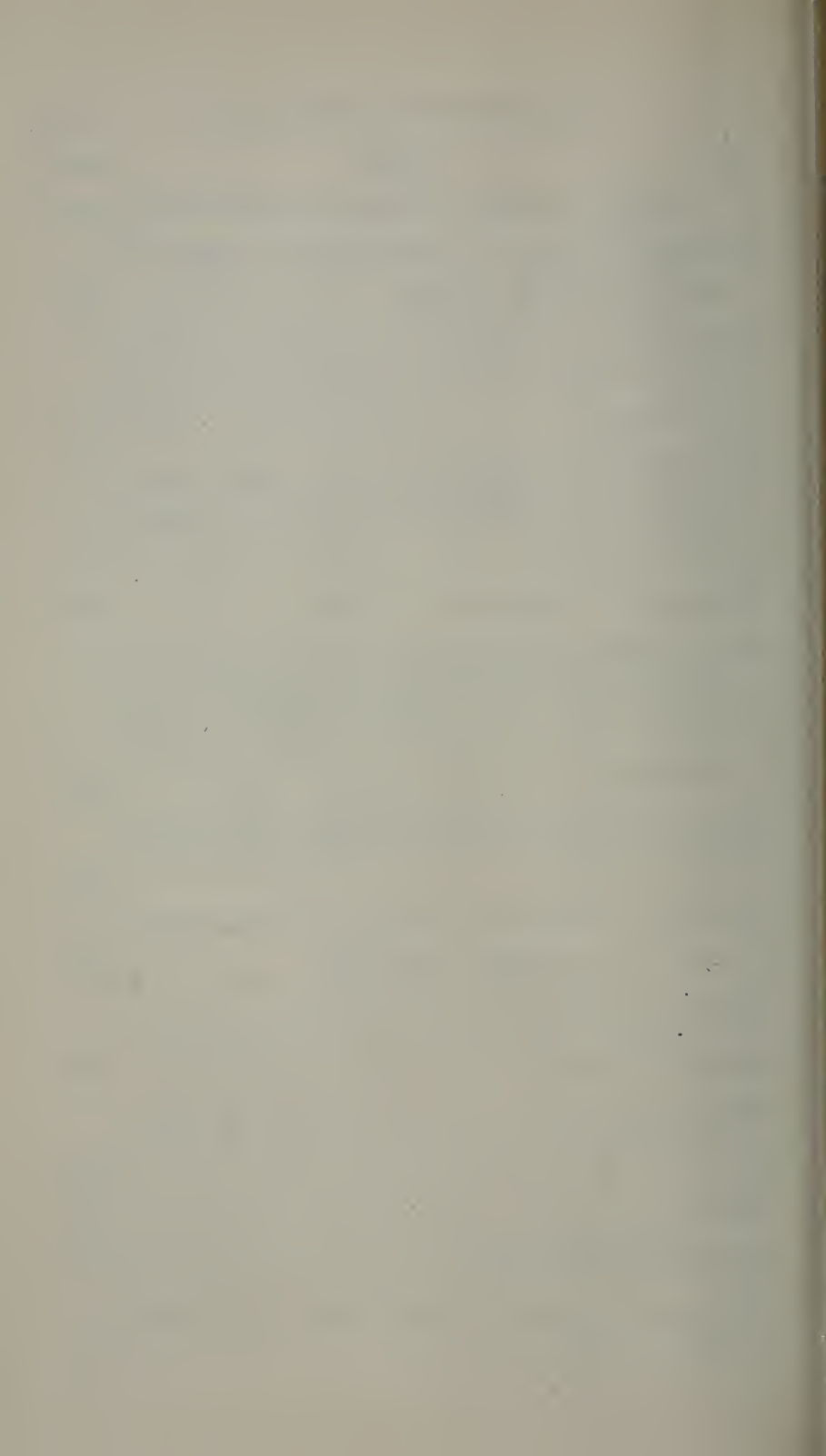
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In the District Court of the United States for the  
Northern District of California, Southern Division

Civil No. 28990R

THOMAS E. HAYES, on Behalf of Himself and  
All Others Similarly Situated, Who May Come  
In and Prosecute This Action and Contribute  
to the Costs Thereof,

Plaintiffs,

vs.

UNION PACIFIC RAILROAD CO., a Corporation,  
and DINING CAR EMPLOYEES  
UNION LOCAL 372, a Voluntary Unincorporated  
Labor Organization; JAMES G. BARKDOLL,  
as District Director of Said Local 372  
in the District of Los Angeles, State of California,

Defendants.

COMPLAINT TO PREVENT, AND SECURE  
DAMAGES FOR, UNLAWFUL DISCRIMINATION  
UNDER THE RAILWAY LABOR  
ACT

I.

Plaintiff named above brings this action on behalf of himself and on behalf of those persons whose names are set forth on Exhibit "A" attached hereto and made a part hereof, and on behalf of all other employees of defendant Union Pacific Railroad Co. (hereinafter referred to as "Railroad") similarly situated. Plaintiff and said

other persons and employees are hereinafter collectively referred to as "Plaintiffs."

## II.

Plaintiffs bring this action (1) to prevent the discriminatory application by Defendants, solely because of the race of plaintiffs, of seniority rules so as to deprive plaintiffs of their rights to exercise seniority in accordance with the terms of a collective bargaining agreement between defendants, (2) to recover damages from defendants for such discriminatory application of seniority rules, and (3) for a declaration that the practices of defendants complained of herein are without warrant in law.

## III.

Jurisdiction is conferred on the Court by §1337, 28 USCA (Judicial Code), giving the District Court original jurisdiction of any civil action arising under any act of Congress regulating commerce, and by §2 of the Railway Labor Act, 45 USCA §151(a).

## IV.

At all the times herein mentioned defendant Railroad was and now is a corporation engaged in interstate commerce, organized under the laws of a state unknown to plaintiffs, and duly and regularly admitted to do business in the State of California as a foreign corporation; and defendant Dining Car Employees Union Local 372 (hereinafter referred to as "Union") was and is a voluntary non-incorporated association and labor organization



acting as the exclusive collective bargaining agent, pursuant to the terms and provisions of said Railway Labor Act, for plaintiffs and all other employees of Railroad engaged in dining car and commissary service, and functioning as such collective bargaining agent in the State of California and within the jurisdiction of this Court.

## V.

The members of Union are too numerous to permit of bringing them all before the Court as defendants, and jurisdiction of the person of Union is conferred upon the Court by service of process upon a member and officer of Union, namely, James G. Barkdoll, District Chairman of Union for Los Angeles, California, District.

## VI.

All of the plaintiffs are members of the Negro race and they are employees of the Railroad in its dining car and commissary service, or former employees of Railroad in said services who have, by reason of discriminatory practices by Railroad and Union, been deprived of their seniority rights and by reason thereof have either left or been discharged from their employment by Railroad, and plaintiffs at all times mentioned herein are either members of Union or former members thereof and entitled to representation by Union as their collective bargaining agent, without discrimination. As employees of Railroad, plaintiffs were at all times mentioned herein engaged in interstate commerce.



VII.

At all times herein mentioned there was and now is in full force and effect a written collective bargaining agreement (hereinafter called the "Agreement") executed by Railroad and Union effective June 1, 1942.

VIII.

In some instances plaintiffs had, prior to June 1, 1942, established an employment relationship with Railroad and were in such relationship on June 1, 1942, and the remainder of Plaintiffs have since June 1, 1942, established an employment relationship with Railroad in accordance with the terms of Part I, Article III, Rule 14, subdivision (a) of said Agreement; and at the time when said employment relationship was created, plaintiffs were and each of them was accorded a seniority date in accordance with the terms of Part I, Article IV, Rule 17 in the seniority group and class designated by Railroad at the time when the employment relationship was created.

IX.

During the time when the plaintiffs herein occupied an employment relationship with Railroad, they were by Railroad assigned to that certain seniority group known as Group B—Challenger runs, as defined in Part I, Article IV, Rule 19 of said Agreement, whereas white persons who were members of Union were, with the connivance of Railroad and Union, at the time when they estab-

lished an employment relationship, assigned by Railroad to seniority Group A—Standard dining car runs, as defined in said Rule 19.

Moreover, plaintiffs at the time they established their employment relationship were by Railroad and in connivance with Union, assigned to the third seniority class, to wit, second cooks, and coach buffet cooks, as defined in Part I, Article IV, Rule 20 of said Agreement, whereas the white members of said Union in the dining car service of Railroad were at the time their employment relationship was created, assigned by Railroad, in connivance with Union, either to Class I—Chef caterers, or Class II—chefs, as defined in said Rule 20, and by reason of the discriminatory treatment given to the said white members of the Union, their pay and allowances were materially larger than the pay and allowances of plaintiffs, although there was no distinction between the ability and competence of plaintiffs and said white members of Union.

## X.

Under the terms of said Agreement, and particularly Part I, Article IV, Rule 17, subdivision (c), it was impossible for plaintiffs to obtain a seniority date and accumulate the seniority in a higher class than that to which they were assigned at the inception of their employment relationship, except in accordance with the terms of said Rule 17, which provides that an employee will be accorded a seniority date in a higher group or class

in which he has not previously acquired a seniority date only upon assignment by bulletin to a bulletin position or vacancy in such higher group or class and the seniority date so accorded will be the date of assignment and will also be accorded in all intermediate groups and classes, and an employee assigned to a position in a higher group or class will retain the seniority dates held in all lower groups and classes and continue to accumulate seniority therein. Railroad, in connivance with Union, has at all times within four years preceding the filing of this complaint refused to permit plaintiffs to acquire seniority either in Class I—Chef caterers, or Class II—Chefs, as defined in Part I, Article IV, Rule 20, or in Group A—Standard dining car runs, as defined in Part I, Article IV, Rule 19, by refusing to accept from plaintiffs bids for bulletin positions in higher groups and classifications to which they were entitled by reason of seniority, and which bulletined positions were filled, by Railroad in connivance with Union, by white members of Union having lesser seniority than plaintiffs.

## XI.

Not only has Railroad, in connivance with Union, denied seniority rights to plaintiffs, as alleged in paragraph X hereof, but has at the same time employed plaintiffs in seniority Group A—Standard dining car runs, as defined in said Rule 19, and in Class I—Chef caterers, and Class II—Chefs, as defined in said Rule 20, but without, however, as-

signing to plaintiffs any seniority date in said groups and classes, and has thereby prevented plaintiffs from accumulating seniority in said groups and classes.

## XII.

That said Agreement provided in Part I, Article V, Rule 26 thereof that promotion shall be based upon seniority, fitness and ability, fitness and ability being sufficient, seniority shall prevail; but with reference to these plaintiffs, Railroad, in connivance with Union, has denied plaintiffs seniority in higher classes and groups while at the same time has employed plaintiffs in such higher classes and groups for long periods of time without any criticism of their fitness and ability, and the reason for the said discrimination against plaintiffs was and is because they are Negroes, and it is and has been the purpose of Railroad and Union to drive plaintiffs and all other Negroes from service in the employment of Railroad in its dining car department, except in inferior groups and classes; and that this policy was devised and has been enforced with express malice against plaintiffs, and for the purpose of oppressing them.

## XIII.

Union is controlled by persons wholly in sympathy with the said policy of discrimination against plaintiffs and, notwithstanding repeated protest by plaintiffs and their representatives, Railroad and

Union have failed, neglected and refused to refrain from said discriminatory practices, and plaintiffs have no administrative remedy save and except before such bodies of Union and Railroad as have already acquiesced in and perpetuated the said discriminatory practices; and without the interposition of this Court, and without the exercise of its equity jurisdiction in the premises, plaintiffs have no plain, speedy or adequate remedy at law.

#### XIV.

The employment records of plaintiffs are wholly within the possession and control of Railroad and without discovery of said records plaintiffs are unable to calculate and state the damages which they and each of them have suffered by reason of the aforesaid discriminatory practices within four years immediately preceding the filing of this complaint.

Wherefore, plaintiffs pray for the following relief:

(1) For declaratory judgment that the discriminatory practices herein set forth are illegal and a violation by Union of its responsibilities as sole collective bargaining agent for plaintiffs, and by Railroad of its obligation not to discriminate against plaintiffs by reason of race or color, and for an order according plaintiffs and each of them such seniority dates in such class or classes and group or groups as they would have been entitled



to had there been no discrimination against them by defendants.

(2) For a temporary restraining order, restraining Railroad and Union from engaging in discrimination in the application of seniority rules to plaintiffs until the further order of this Court.

(3) For an injunction pendente lite restraining Railroad and Union from engaging in discrimination in the application of seniority rules to plaintiffs until the further order of this Court.

(4) For a permanent injunction forever restraining Railroad and Union from engaging in discrimination in the application of seniority rules to plaintiffs.

(5) For a reference to a United States Commissioner or other authorized officer to take testimony and report to the Court upon the damages sustained by plaintiffs and each of them by reason of said discriminatory practices in the application of seniority rules to plaintiffs.

(6) For a judgment for such damages thus ascertained by said Commissioner or other authorized person.

(7) For a decree for punitive or exemplary damages on behalf of each of the plaintiffs entitled to recover herein in such amount as to the Court may seem appropriate.

(8) For costs of suit and disbursements incurred herein, together with interest on any damages allowed plaintiffs from the date when they

should have been accorded seniority rights under the terms of said Agreement, and for the allowance of a reasonable attorneys' fee.

(9) For such other and further relief as to this Court may seem meet and just in the premises.

Dated: July 1, 1949.

GLADSTEIN, ANDERSEN,  
RESNER & SAWYER,

/s/ HAROLD M. SAWYER,  
Attorneys for Plaintiffs.

---

EXHIBIT "A"

Alfred Allen, 2521 Blondo Street, Omaha, Nebraska

Lewis Ballard, 2214 North 26th Street, Omaha, Nebraska

Max D. Banks, 3027 R Street, Omaha, Nebraska

Bennie Bates, 2429 Parker Street, Omaha, Nebraska

Dewey Berry, 2760 Lincoln Avenue, Ogden, Utah

Henry Bradford, 1702 North 26th Street, Omaha, Nebraska

Clarence O. Buckner, 923 North 27th Street, Omaha, Nebraska

John Bukey, 1437 East 15th Street, Los Angeles 21, California

Richard Buntin, 2322 East 108th Street, Los Angeles 2, California

Henry Burnett, 703 East 42nd Place, Los Angeles, California

Horace Burnett, 703 East 42nd Place, Los Angeles,  
California

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California

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Ted Eaton, 546 East Jefferson Street, Los Angeles,  
California

Albert L. Ellington, 2719½ North 24th Street,  
Omaha, Nebraska

Robert M. Ewing, 3219 Corby Street, Omaha 10,  
Nebraska

Leroy Fisher, 2875 Maple Street, Omaha, Nebraska

Waymon Fleming, 2807 North 24th Street, Omaha,  
Nebraska

Freddie Franks, 1712½ Willis Avenue, Omaha,  
Nebraska

Langston Gardner, 292 W. Claremont Street, Pasadena, California

Junior L. Gilreath, 2507 Patrick Avenue, Omaha,  
Nebraska

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Elbert L. Holliday, 603 East 121st Street, Los Angeles, California.

Robert J. Ivory, 958 North 27th Avenue, Omaha, Nebraska

Luther W. Jackson, 788 East 40th Place, Los Angeles, California

Marion J. Johns, 2801 Charles Street, Omaha, Nebraska

Charles Johnson, 2726 Franklin Street, Omaha, Nebraska

Donald W. Johnson, 983 North 27th Street, Omaha, Nebraska

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Leadis Kettor, 834 Fillmore Street, San Francisco, California

Edmond King, Jr., 3015 Pinkney Street, Omaha, Nebraska

L. A. King, 311 East 35th Street, Los Angeles, California

Robert Lillard, 2111 Grant Street, Omaha, Nebraska

John H. Lofton, 1201 North 26th Street, Omaha, Nebraska

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Hayward Maynor, 654 $\frac{1}{2}$  East 37th Street, Los Angeles, California

Eugene McCarthy, 2769 Alcatraz, Berkeley, California

John L. Miller, 2844 Binney Street, Omaha, Nebraska

Walter M. Moore, 885 East Santa Barbara Avenue, Los Angeles, California

John W. Morgan, 2829 Decatur Street, Omaha, Nebraska

Richard O. Morrison, 3012 Miami Street, Omaha, Nebraska

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Edgar Nelson, 2601 Wirt Street, Omaha, Nebraska

Leonard A. Nelson, 2601 Wirt Street, Omaha, Nebraska

Lawrence Nolbert, 1515 $\frac{1}{4}$  East 33rd Street, Los Angeles, California

Oliver E. Odom, 3771 Cimarron Street, Los Angeles, California

Charles N. Pankey, 3110 Corby Street, Omaha, Nebraska

William B. Regen, 501 East 46th Street, Los Angeles, California

Charles M. Renfro, 885 East Santa Barbara Avenue, Los Angeles, California

Leonard D. Riwers, 2608 Patrick Avenue, Omaha, Nebraska

Isiaiah Rivers, 2720 Miami Street, Omaha, Nebraska

Benjamin Robinson, 1151½ West 54th Street, Los Angeles, California

Harvey H. Robinson, 1370 East 42nd Street, Los Angeles, California

Frank Sanders, Jr., 2234 Ohio Street, Omaha, Nebraska

Thomas Savage, 1014 South 11th Street, Omaha, Nebraska

John J. Shanks, 312 East 42nd Place, Los Angeles, California

John A. Shaw, 2609 Hamilton, Omaha, Nebraska

French L. Spencer, 2876 Corby Street, Omaha 10, Nebraska

Albert E. Simpson, 159 East 54th Street, Los Angeles, California

Albert Smith, 232 West 47th Place, Los Angeles, California

Charles A. Smith, 318 East 29th Place, Los Angeles, California

Thomas R. Spikes, 1260 East 124th Street, Los Angeles, California

Vernon Stamps, 1342 West 35th Street, Los Angeles, California

Amos Stoner, 2233 Miami Street, Omaha, Nebraska

Willie M. Swanson, 5115 South Main Street, Los Angeles, California

Konwood Thomas, 2619 Decatur Street, Omaha, Nebraska

Vernell Thompson, 1025½ East 33rd Street, Los Angeles 11, California

Harvy H. Trammell, 4711 McKinley Avenue, Los Angeles, California

Robert C. Turner, 2875 Maple Street, Omaha, Nebraska

Livingston S. Vaughn, 1802 Lake Street, Omaha, Nebraska

Roscoe J. Vaughn, Jr., 285 F Ohio, Omaha, Nebraska

Jarome O. Watson, 2406 North 21st Street, Omaha, Nebraska

Henry D. Wiley, 2011 Miami Street, Omaha 10, Nebraska

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Henry L. Williamson, 212 West 49th Street, Los Angeles, California

Chas. P. Westbrooke, 1447 East 52nd Street, Los Angeles, California

Charles Winston, 916 East 116th Street, Los Angeles, California

Elie Woods, Jr., 3206 Ellis Street, Berkeley, California

Pall E. Woods, 208 West 59th Place, Los Angeles, California

State of California,

City and County of San Francisco—ss.

Harold M. Sawyer, being first duly sworn, deposes and says:

That he is one of the attorneys for plaintiffs herein; that he makes this verification for and on

behalf of plaintiffs for the reason that none of the plaintiffs is at the present time in the county in which affiant has his office; that affiant prepared and read the within and foregoing complaint and knows the contents thereof; that the same is true of his own knowledge except as to matters therein stated upon information or belief, and as to those matters he believes it to be true.

/s/ HAROLD M. SAWYER.

Subscribed and sworn to before me this 6th day of July, 1949.

[Seal] /s/ AGNES GUAVE,  
Notary Public in and for the City and County of  
San Francisco, State of California.

My Commission Expires January 14, 1953.

[Endorsed]: Filed July 6, 1949.

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[Title of District Court and Cause.]

### AFFIDAVIT OF H. A. HANSEN

State of Nebraska,  
County of Douglas—ss.

H. A. Hansen, being first duly sworn, on oath deposes and says that he is Manager of the Dining Car and Hotel Department of the Union Pacific Railroad Company, one of the defendants named in the above-entitled action, and makes this affidavit in support of the objections of defendant Union

Pacific Railroad Company to the plaintiff's interrogatories dated August 16, 1949:

Affiant states:

(1) That Flenoid Cunningham, Ted Eaton, Elbert L. Holliday, Frederick J. May, Lawrence Nolbert and Albert Smith, who are among those persons named in paragraph I of the amendment to the complaint dated August 12, 1949, as well as in Exhibit A attached to the original complaint in the above-named case, have never been employed by the Union Pacific Railroad Company in the craft or class known as "dining and cafe car cooks," also known as "kitchen employes on dining, cafe-lounge, cafe-club, cafe-observation, cafe and coach buffet cars" (hereinafter referred to as the "cook's craft"), in its dining car service at any time within the four-year period preceding the filing of the complaint in the above-named suit; that the said six above-named persons are employed by the Union Pacific Railroad Company as waiters, which is a class or craft wholly separate and distinct from the cook's craft, and that these six employes are not represented by the defendant Dining Car Employees Union Local 372, but by another separate and distinct union.



(2) That Horace Burnett, Leadis Kettor, William B. Regen Leonard D. Rivers, John J. Shanks and Pall E. Woods, who are among those persons named in paragraph I of the amendment to the complaint dated August 12, 1949, as well as Exhibit A attached to the original complaint in the above-named case, have never been employed by the Union Pacific Railroad Company in the cook's craft or in its dining car service and that although diligent search has been made no record of any employment in the dining car service with the Union Pacific Railroad Company, of said above-named persons has been found.

(3) That Lawrence Nelson, who is one of those persons named in paragraph I of the amendment to the complaint in the above-named case dated August 12, 1949, had not when the complaint was filed established an employment relation with the Union Pacific Railroad Company (as defined in Rule 14 of the agreement between the Union Pacific Railroad Company and Dining Car Employees Union Local 372, effective June 1, 1942, a copy of which is attached hereto and made a part hereof); in that he had not completed 90 days of continuous service with the Company as required by Rule 14(a) of said agreement.

(4) That Hurdo Longmire, who is one of those persons named in paragraph I of the amendment to the complaint in the above-named suit dated August 12, 1949, has had no employment with the Union Pacific Railroad Company in the cook's craft with-

in the four years preceding the date of the filing of the complaint in this action.

(5) That to develop and ascertain the information requested in the interrogatories dated August 16, 1949, served by the plaintiff in the above-named action, will require much detailed examination of numerous files and records, which fact is self-evident from the interrogatories themselves; that to furnish the information requested in interrogatory I, subdivisions (2) and (3), it will be necessary to locate and examine the individual time sheets of each person concerned for 96 semi-monthly pay roll periods and, in many cases, since such persons will have worked in more than one assignment during a single pay period, it will be necessary to recompute from such records the amount earned in each assignment; that it will also be necessary for each of the persons listed in all cases to compute back pay which was not indicated on current time rolls for certain retro-active pay increases which were given subsequent to the completion of said current pay rolls; that after all of the necessary detail work in locating and compiling the information necessary to respond to the said interrogatories has been completed, it will then be necessary to compile this information in presentable form and to carefully recheck the information; and that in order to answer and furnish all of the information requested in the interrogatories dated August 16, 1949, will require the work of 25 employees working for approximately 70 eight-hour days.

(6) That according to affiant's information and



belief, plaintiff Thomas E. Hayes has not been authorized to bring or maintain this action by all of the persons listed on Exhibit A attached to the original complaint herein or in paragraph I of the amendment to the complaint dated August 12, 1949; that the affiant has been advised either directly or indirectly by some of those persons listed on Exhibit A attached to the original complaint or in paragraph I of the amendment to the complaint dated August 12, 1949, that they have neither authorized nor approved the bringing of this suit allegedly on their behalf by plaintiff Hayes.

(7) That the allegations contained in the complaint in the above-entitled action that the defendant Union Pacific Railroad Company and Dining Car Employees Union Local 372 have discriminated because of the fact that said persons may be negroes, against plaintiff Thomas E. Hayes and those persons named in Exhibit A attached to the complaint or in paragraph I of the amendment to the complaint dated August 12, 1949, by allegedly preventing the said persons from exercising their seniority rights in accordance with the terms of the aforesaid agreement in an effort to drive all negroes employed in the cook's craft from the employ of the Union Pacific Railroad Company is wholly false and without any foundation in fact.

That there has been no discrimination because of race or color against any negro employee under the aforesaid agreement and this is demonstrated by the fact that 66 of those persons listed in Exhibit A attached to the complaint and 70 of those named

in paragraph I of the amendment to the complaint dated August 12, 1949, presently and did on the date the complaint was filed herein, hold seniority in group A and that 8 of said persons also hold seniority in group AA and that, in addition, 20 of said named persons hold seniority in the second seniority class known as chefs, all as defined in Rules 19 and 20 of the said agreement.

That as of the date complaint was filed in the above-named action, the following statement shows under classifications of white and colored the number of employes employed by the defendant Union Pacific Railroad Company in the classes and groups as indicated:

Cooks Holding Group AA and Group A Seniority As Of July 6, 1949

Chef-Caterers—Chefs		2nd Cooks		3rd Cooks		4th Cooks	
White	Colored	White	Colored	White	Colored	White	Colored
41	16	37	31	21	18	13	19

Cooks Holding Group A But Not Group AA Seniority As Of July 6, 1949

Chefs		2nd Cooks		3rd Cooks		4th Cooks	
White	Colored	White	Colored	White	Colored	White	Colored
37	61	19	53	11	56	9	65
Grand							
Total	77	56	84	32	74	22	84

Total:

White—188

Colored—319

There does exist a controversy between a small group of employes in the cook's craft and the remainder of the employes in the craft with respect to the application of seniority rights. Certain employes in the cook's craft whose seniority rights were first acquired in Group B, of whom the plaintiff Thomas E. Hayes is one, have made claim that the original date upon which they acquired seniority in Group B should apply also as their seniority in Group A retroactive to the date the seniority was acquired in Group B. Such action would adversely affect employes, both colored and white, holding seniority in Group A and violate said agreement effective June 1, 1942. The requested action is in effect a request for a change in the collective bargaining agreement. Affiant has been informed by the collective bargaining representative that the employees thus adversely affected are not agreeable to the requested action. Affiant further states that the controversy arising out of the aforesaid claim and disagreement between members of the cook's craft does not arise from any discrimination as between white and colored employees in the application of seniority rights.

/s/ H. A. HANSEN

Subscribed and sworn to before me this 26th day of August, 1949.

[Seal] /s/ LOUIS SCHOLNICK,

Notary Public in and for  
said County and State.

[Endorsed]: Filed August 29, 1949.

[Title of District Court and Cause.]

AFFIDAVIT OF STEVEN R. AUGUSTON

Steven R. Auguston, being first duly sworn, deposes and says:

I am General Chairman and Secretary-Treasurer of Dining Car Employees Union, Local No. 372, one of the defendants in the above-entitled action, and have been an officer of said defendant at all times mentioned in the complaint.

The said defendant is a labor organization and was organized on July 20, 1933, for the purpose of representing for collective bargaining purposes certain employees of Union Pacific Railroad, including kitchen employees and bartenders on passenger trains operated by the said Railroad. The membership of said defendant Union has been and is comprised of employees of said Railroad, including kitchen employees and bartenders on passenger trains, and the said defendant at all times herein mentioned has been the collective bargaining representative under the Railway Labor Act of kitchen employees and bartenders employed on passenger trains operated by said Railroad.

The defendant Union does not include within its membership, and does not represent and has never included or represented, any employees on passenger trains other than kitchen employees and bartenders. Dining car stewards employed by the said Railroad are and have been represented by the Brotherhood of Railroad Trainmen; dining car

waiters and lounge car attendants employed by the said Railroad are and have been represented by Protective Order of Dining Car Waiters Local No. 465; employees in commissary offices and storerooms of said Railroad are and have been represented by the Brotherhood of Railway Clerks; and the defendant Union has never represented dining car stewards, dining car waiters, lounge attendants or employees in commissary offices and storerooms.

The defendant Union does not, and has not at any time mentioned in the complaint, discriminated in any way against negroes, but on the contrary admits negroes to its membership upon exactly the same terms and conditions, and accords them exactly the same rights and privileges, as white men, without any differentiation of any kind or nature between the two.

Of the members of the defendant Union employed on passenger trains, approximately 140 are negroes.

Of the defendant Union's four District Chairmen (the Union is divided into five Districts with a Chairman at the head of each District except the Portland District, where the General Chairman acts as Chairman of the District), two, namely, Ercil M. Orme, Chairman of the Denver District, and Fantley Jones, Chairman of the Ogden District, are negroes.

Among the Union's officers who negotiated and executed on its behalf the collective bargaining



agreement referred to in paragraph VII of the complaint were Ercil M. Orme and Fantley Jones, the two District Chairmen above mentioned. Said agreement secures to negroes exactly the same rights and privileges as white men and does not differentiate in any way between the two.

During the time mentioned in the complaint, vacant positions (including positions newly created) in the classifications represented by defendant Union have been filled by the defendant Railroad either by assigning thereto existing employees who apply therefor as provided in said agreement or, if no qualified employees apply therefor, by hiring new employees. Normally, existing employees apply for, and are assigned to any vacant positions (including positions newly created) in the higher seniority groups and classifications, and the only vacant positions for which new employees are hired are positions in the lower seniority groups and classifications for which no applications have been received from existing employees. The result is that almost all new employees are hired to fill positions in lower seniority groups and classifications, and this is true, and has been true at all times mentioned in the complaint, whether the new employees be white or negro. In the exceptional instances when the defendant Railroad has hired new employees to fill positions in the higher seniority groups and classifications, it has hired negro as well as white men to fill such positions. At all times mentioned in the complaint the seniority

group and classification of a new employee (including any new employees mentioned in the complaint) was determined automatically, and regardless of the race of such new employee, by the seniority group and classification of the position which such new employee was hired and employed to fill.

At no time mentioned in the complaint has the defendant Union had any voice or part whatever in the selection or hiring by the defendant Railroad of new employees, and if there has been any instance in which the defendant Railroad, in selecting and hiring a new employee, selected and hired a white man in preference to a negro, the defendant Union had no voice or part whatever in such selection or hiring.

At all times mentioned in the complaint, the promotion and assignment of employees to positions in higher seniority groups has been governed by said agreement regardless of race. It is false and untrue that plaintiff and other negroes have been confined to seniority Group B and the third seniority class and to lower seniority groups and classes, and have been denied seniority in Group A and in the first and second seniority classes. The fact is that plaintiff himself holds seniority in Group A, his seniority date in the Group A roster being July 7, 1948. Of the persons listed in the Exhibit attached to the complaint, 61 hold Group A seniority (their seniority dates on the Group A roster running back as far as the year 1916); 2 also hold seniority in Group AA, and 15 are employed in the



second seniority class (chefs). A true and correct statement of the seniority classifications and dates on the Group A and Group AA seniority rosters of said 61 persons is attached hereto as Exhibit A. Of the remaining persons listed in the Exhibit attached to the complaint, 6 have never been employed in any classification represented by defendant Union, but are employed as waiters and are represented by another union, 5 others are no longer employed by the defendant Railroad, and defendant Union has been unable to identify 6 others as ever having been employed by defendant Railroad, all as particularly appears in said Exhibit B hereto attached.

If defendant Railroad at any time mentioned in the complaint committed any act of racial discrimination in respect to any employee represented by defendant Union, defendant Union was and is unaware thereof. Neither plaintiff nor any other person at any time mentioned in the complaint called any such alleged act of discrimination to the attention of defendant Union, or made any request that defendant Union take action in respect thereto.

/s/ STEVEN R. AUGUSTON.

Subscribed and sworn to before me this 14th day of September, 1949.

[Seal]      /s/ EUGENE P. JONES,  
Notary Public.

## EXHIBIT A

Name	Classification of Position	Group A Seniority Date
Thomas E. Hayes	2nd Cook	7- 7-48
Alfred Allen	2nd Cook	8- 5-47
Lewis Ballard	2nd Cook	9- 1-47
Max D. Banks	2nd Cook	5-23-46
Bennie Bates	2nd Cook	9- 1-47
Dewey Berry	4th Cook	11-25-44
Henry Bradford	3rd Cook	5- 9-45
Clarence O. Buckner	4th Cook	6-16-48
John Bukey	Chef	12-29-19
Richard Buntin	2nd Cook	6- 2-46
Henry Burnett		(No "A" Date)
Horace Burnett		(Not identified)
Willie R. Burton	3rd Cook	8-24-46
M. J. Clayton	Chef	6- 2-46
Tom D. Clerkley	4th Cook	6-16-48
Raymond Corbin	3rd Cook	9- 1-47
Flenoid Cunningham	<u>Waiter</u>	
Ted Eaton	<u>Waiter</u>	
Albert L. Ellington	4th Cook	(No Date)*
Robert M. Ewing	Chef	9- 1-47
Leroy Fisher	3rd Cook	7- 1-47
Waymon Fleming	4th Cook	7- 4-48
Freddie Franks	4th Cook	7- 4-48
Langston Gardner	2nd Cook	6- 2-46
Junior L. Gilreath	3rd Cook	9- 1-47
Dennis Hall	Chef	9- 1-47
Edward W. Hamilton	3rd Cook	"A" 6- 2-46
Elbert L. Holliday	<u>Waiter</u>	"AA" 6-12-47
Robert J. Ivory	4th Cook	5- 1-48
Luther W. Jackson	2nd Cook	1- 3-45

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\* First entered service June 1, 1949, and will not acquire seniority date until he has had ninety days' service.

Name	Classification of Position	Group A Seniority Date
Marion J. Johns	3rd Cook	9- 1-47
Charles Johnson		(No "A" Date)
Donald W. Johnson	4th Cook	7-22-47
Edward M. Jones	Chef	8- 5-16
Theodore R. Jones	Chef	6- 2-46
Henry O. Jury	2nd Cook	6- 2-46
Leadis Kettor		(Not identified)
Edmond King, Jr.	3rd Cook	5- 3-46
L. A. King	2nd Cook	6-13-46
Robert Lillard		(No longer Employed)
John H. Lofton		(No longer Employed)
Joel Manning	4th Cook	6- 2-46
Osceala Manning	4th Cook	6- 2-46
Frederick J. May	<u>Waiter</u>	
Hayward Maynor	3rd Cook	6- 2-46
Eugene McCarthy	3rd Cook	(No "A" Date)
John L. Miller		(No "A" Date)
Walter M. Moore	3rd Cook	6- 2-46
John W. Morgan	4th Cook	5-23-46
Richard O. Morrison	4th Cook	9- 1-47
Belford N. Moses	2nd Cook	6- 2-46
Edgar Nelson	4th Cook	10- 8-47
Leonard A. Nelson		(No longer Employed)
Lawrence Nolbert	<u>Waiter</u>	
Oliver E. Odom	Chef	6- 2-46
Charles N. Pankey	Business Car Chef	(No "A" Date)
William B. Regen		(Not identified)
Charles M. Renfro	2nd Cook	6- 2-46
Leonard D. Riuers		(Not identified)
Isiaiah Rivers		(No "A" Date)
Benjamin Robinson	Chef	6- 2-46
Harvey H. Robinson	Chef	6- 2-46
Frank Sanders, Jr.	4th Cook	7- 4-48
Thomas Savage	2nd Cook	9-23-44
John J. Shanks		(Not identified)
John A. Shaw	4th Cook	6-15-48
French L. Spencer	Business Car Chef	(No "A" Date)

Name	Classification of Position	Group A Seniority Date
Albert E. Simpson	4th Cook	"A" 5-20-46
Albert Smith	<u>Waiter</u>	"AA" 5-19-47
Charles A. Smith	4th Cook	6- 2-46
Thomas R. Spikes	Chef	6- 2-46
Vernon Stamps	2nd Cook	10-10-45
Amos Stoner		(No longer Employed)
Willie M. Swanson	4th Cook	6- 2-46
Kenwood Thomas	4th Cook	12- 9-47
Vernell Thompson	4th Cook	3-19-46
Harvy H. Trammell	4th Cook	6- 2-46
Robert C. Turner	3rd Cook	7-19-48
Livinston S. Vaughn		(No "A" Date)
Roscoe J. Vaughn, Jr.	4th Cook	9- 1-47
Jarome O. Watson	4th Cook	7- 7-48
Henry D. Wiley		(No longer Employed)
J. M. Williams	3rd Cook	6- 2-46
Henry L. Williamson	Chef	6- 2-46
Chas. P. Westbrooke	Chef	6- 2-46
Charles Winston	Chef	6- 2-46
Elie Woods, Jr.	3rd Cook	9- 1-47
Pall E. Woods		(Not identified)

Receipt of copy acknowledged.

[Endorsed]: Filed September 14, 1949.

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[Title of District Court and Cause.]

## MOTIONS TO DISMISS, TO STRIKE, TO SEVER CLAIMS AND FOR A DEFINI- TIVE STATEMENT

The defendant Dining Car Employees' Union  
Local 372 moves the Court as follows:

1. To dismiss the action because the complaint fails to state a claim against the said defendant upon which relief can be granted.

2. To dismiss the action because of lack of jurisdiction over the subject matter.

3. To dismiss the action because it is not maintainable as a class action under Rule 23 of the Rules of Civil Procedure, or otherwise.

4. To dismiss the action as to the persons named as additional parties plaintiff in the Amendment to Complaint and as to each of them because none of them has applied for or obtained leave to intervene as a party plaintiff.

5. To dismiss the action because the persons named as parties plaintiff in the Amendment to Complaint may not join in one action as plaintiffs under Rule 20 of the Rules of Civil Procedure, or otherwise.

6. To dismiss the action upon the ground that the claims of several persons named as parties plaintiff in the Amendment to Complaint may not be joined in a single action under Rule 18 of the Rules of Civil Procedure, or otherwise.

7. To dismiss the action as to persons named as additional parties plaintiff in the Amendment to Complaint because such persons have not authorized suit to be brought in their name or in their behalf.

8. To strike the Amendment to Complaint because it was filed without leave and because it names

as additional parties plaintiff persons who have not applied for or obtained leave to intervene as such, and attempts to state claims in their behalf.

9. To sever the claims of several parties plaintiff because they are misjoined.

10. To strike paragraph I of said complaint and Exhibit A attached to said complaint because the action is not maintainable as a class action and the said portions of the complaint are immaterial and impertinent.

11. For a more definite statement because the complaint is so vague and ambiguous that the said defendant cannot reasonably be required to frame a responsive pleading. The defects complained of and the details desired are as follows:

(a) The complaint alleges that the persons named as plaintiffs are either employees or former employees of the defendant Railroad, but does not state with respect to any particular plaintiff whether he is or is not an employee of the defendant Railroad. The defendant Union desires a statement with respect to each plaintiff as to whether he is or is not an employee of the defendant Railroad.

(b) The complaint alleges that the persons named as plaintiffs are either members of the defendant Union or former members thereof, but does not state with respect to any particular plaintiff whether or not such plaintiff is a member of the Union at the present time. Defendant Union de-



sires a statement with respect to each plaintiff as to whether or not such plaintiff is a member of the Union.

(c) The complaint alleges that the defendant Railroad has refused to accept from the plaintiffs bids for Bulletin positions in higher groups than Group B and in higher classes than class 3, but does not state with respect to any plaintiff when any bid for a position in a higher group and classification was made or rejected and does not identify the position for which the bid was made. The said defendant desires a statement from each plaintiff setting forth each instance in which he bid for a Bulletin position in a group higher than B or in a classification higher than the third, identifying the position for which the bid or application was made, furnishing the date of the bid or application and furnishing such other information as may be necessary to enable the said defendant to identify the said incident and to admit or deny the same.

(d) The complaint alleges that the plaintiffs have been employed in seniority Group A and in classes 1 and 2 without being assigned seniority dates in such groups and classes, but does not state when or where any particular plaintiff was so employed and does not identify the position in which he was so employed. The said defendant desires a statement from each plaintiff stating when and where he was employed in seniority Group A or in classifications 1 or 2, identifying the positions in

which he was so employed and supplying such other information as may be necessary to enable the said defendant to identify the incident and to admit or deny the same.

(e) The complaint alleges in paragraphs IX, X, XI and XII that certain alleged acts of the defendant Railroad mentioned in said paragraphs were done with the "connivance" of the defendant Union, but does not state what wrongful act or acts the defendant Union is complained to have committed and does not state how or in what manner the defendant Union is claimed to have connived. The defendant Union desires from each plaintiff a definite statement of the wrongful act or acts which the defendant Union is claimed to have committed in respect to such plaintiff and a definite statement of when, how and in what manner the defendant Union is claimed to have connived with the defendant Railroad.

(f) The complaint refers to repeated protests by plaintiffs and their representatives, but it does not state by what person or to what person any such protest was made and does not state when or in what manner any such protest was made. The defendant Union desires a definite statement identifying the person or persons by whom each such protest was made, identifying the person or persons to whom each such protest was made and stating when and where each such protest was made.

12. To dismiss the action upon the ground that

suit cannot be maintained against said defendant by its members for the reason that such suit represents an attempt by plaintiffs to sue themselves.

BROBECK, PHLEGER &  
HARRISON,

/s/ MARION B. PLANT,  
Attorneys for defendant Dining Car Employees  
Union Local 372.

To Messrs. Gladstein, Andersen, Resner & Sawyer  
and Harold M. Sawyer, Attorneys for Plain-  
tiffs:

Please Take Notice, that the undersigned will bring the above Motion on for hearing before the above-entitled Court in the Courtroom of the Honorable Michael J. Roche, District Judge, in the Post Office Building, City and County of San Francisco, State of California, on Monday, September 26, 1949, at the hour of 10 o'clock a.m. of said day, or as soon thereafter as counsel can be heard.

BROBECK, PHLEGER &  
HARRISON,

/s/ MARION B. PLANT,  
Attorneys for defendant Dining Car Employees  
Union Local 372.

Service of copy acknowledged.

[Endorsed]: Filed September 14, 1949.

[Title of District Court and Cause.]

## MOTION TO DISMISS FOR MORE DEFINITE STATEMENT AND TO STRIKE

The defendant Union Pacific Railroad Company moves the Court as follows:

(1) To dismiss the action as to defendant Union Pacific Railroad Company on the ground that the Court does not have jurisdiction of the subject matter because

(a) it appears from the complaint that the action does not arise under the Railway Labor Act, an act regulating commerce which is the ground of jurisdiction relied upon, and

(b) the allegations in the complaint that this defendant has discriminated against the plaintiff, Thomas E. Hayes, and other colored persons employed by it as dining car cooks, because of their race in the application of seniority rights, either alone or in connivance with defendant Union, are not true and are not made in good faith, but on the contrary are made with the purpose of imposing on the jurisdiction of this court.

(2) (a) To dismiss the action as a class action on the ground that the complaint does not allege facts which are required by Rule 23 of Federal Rules of Civil Procedure as a foundation for a class action, and it affirmatively appears from the affidavits in support of this motion that plaintiff Thomas E. Hayes is not such a person as will fairly

insure the adequate representation of all colored persons employed as dining car cooks by defendant Union Pacific Railroad Company; or

(b) in the alternative, to dismiss the action as to all persons on whose behalf the action is brought who are not permitted to intervene in the action as parties plaintiff within some reasonable period to be fixed by the Court.

(3) To dismiss the action as to each person named as plaintiff in the Amendment to Complaint who has not authorized the bringing of this action on his behalf.

(4) To dismiss the action on the ground that there is an administrative remedy under the Railway Labor Act available to the plaintiffs which plaintiffs should resort to in lieu of seeking relief in Court.

(5) To dismiss the action on the ground that the complaint fails to state a claim upon which relief can be granted.

(6) That plaintiff be required to make a more definite statement on the ground that the complaint is so vague and ambiguous that this defendant cannot be required to frame a responsive pleading for the following reasons:

(a) the complaint fails to allege the facts required by Rule 23 which justify the bringing of a class action. The complaint should state the question of law or fact which is common to the several



rights asserted, the nature and extent of the class represented, whether the class includes all dining car cooks employed by defendant Railroad and facts showing that plaintiffs will fairly insure the adequate representation of the class;

(b) the complaint does not allege the terms of the collective bargaining agreement of June 1, 1942, which have been violated by the conduct alleged in paragraphs IX, XI and XII of the complaint;

(c) the complaint does not allege what efforts, if any, have been made by the plaintiffs to seek relief through the administrative remedy provided by the Railway Labor Act nor does the complaint state facts showing such remedy to be inadequate;

(d) the complaint does not allege facts showing that plaintiffs have no adequate remedy at law justifying the injunctive relief sought;

(e) the complaint does not allege the existence of a controversy nor the contentions of the opposing parties with respect thereto, as to which plaintiffs seek a declaratory judgment;

(f) the complaint does not allege the manner in which plaintiffs have been damaged, the time when the seniority rights of each plaintiff arose, the time when and the circumstances under which the seniority rights of each plaintiff was violated and whether or not the plaintiffs seek damages against all of the defendants or only some of them.

(7) That the Court make an order striking:



(a) the Amendment to Complaint dated August 12, 1949, on the ground that it was filed for the sole purpose of adding parties plaintiff without order of Court in violation of the provisions of Rules 21 and 24 of Federal Rules of Civil Procedure, or

(b) in the alternative, that the names of all plaintiffs other than Thomas E. Hayes be stricken from the complaint on the ground that the complaint does not state facts which justify the joinder of such persons as parties plaintiffs under Rule 20 of the Federal Rules of Civil Procedure;

(c) the provisions of paragraph 8 of the prayer requesting allowance of reasonable attorneys' fees and the paragraph 7 thereof requesting punitive damages on the ground that such fees and damages are not recoverable in this action.

Dated: September 9, 1949.

T. W. BOCKES,  
W. R. ROUSE,  
ELMER COLLINS,  
JAMES A. WILCOX,  
E. E. BENNETT,  
EDWARD C. RENWICK,  
MALCOLM DAVIS,  
W. J. SCHALL,

By /s/ EDWARD C. RENWICK,  
Attorneys for Defendant Union Pacific Railroad  
Company.

To Messrs. Gladstein, Andersen, Resner & Sawyer  
and Harold M. Sawyer, Attorneys for Plain-  
tiffs:

Please Take Notice, that the undersigned will  
bring the above Motion on for hearing before the  
above-entitled Court in the Courtroom of the Hon-  
orable Michael J. Roche, District Judge, in the  
Post Office Building, City and County of San Fran-  
cisco, State of California, on Monday, September  
26, 1949, at the hour of 10 o'clock a.m. of said day,  
or as soon thereafter as counsel can be heard.

T. W. BOCKES,  
W. R. ROUSE,  
ELMER COLLINS,  
JAMES A. WILCOX,  
E. E. BENNETT,  
EDWARD C. RENWICK,  
MALCOLM DAVIS,  
W. J. SCHALL,

By /s/ EDWARD C. RENWICK,  
Attorneys for Defendant Union Pacific Railroad  
Company.

Affidavit of Service by Mail attached.

[Endorsed]: Filed September 15, 1949.

[Title of District Court and Cause.]

AFFIDAVIT OF H. I. NORRIS

State of Nebraska,  
County of Douglas—ss.

H. I. Norris, being first duly sworn, on oath deposes and says that he is Assistant Manager of the Dining Car and Hotel Department of the Union Pacific Railroad Company, one of the defendants named in the above-entitled action, and makes this affidavit in support of motion of said defendant Union Pacific Railroad Company to dismiss the complaint filed herein.

Affiant states:

(1) That throughout this affidavit the defendant Union Pacific Railroad Company is referred to as "Company"; the defendant Dining Car Employees Union Local No. 372 is referred to as "Union"; the craft or class known as "dining and cafe car cooks," also known as "kitchen employes on dining, cafe-lounge, cafe-club, cafe-observation, cafe and coach buffet cars," is referred to as the "cook's craft"; and the collective bargaining agreement dated June 1, 1942, between the Company and the Union, which is the collective bargaining representative under the Railway Labor Act for the Company's employes in its cook's craft, is referred to as the "agreement."

(2) That the agreement between the Company and the Union sets forth in Part I, Article IV,

Rules 19 and 20 certain seniority groups and classes which are found in the cook's craft as follows:

"Rule 19. Seniority Groups. Seniority groups shall be as follows:

"Group AA—Selective Runs.

"Group A—Standard Dining Car Runs.

"Group B—Challenger Runs.

"Groups C—Cafe-Lounge, Cafe-Observation and Cafe Car Runs."

"Rule 20. Seniority Classes. Seniority classes shall be as follows:

"1. Chef-Caterers.

"2. Chefs.

"3. Second Cooks and Coach Buffet Cooks.

"4. Third Cooks, Dish-Up Men and Cafe Car Cooks.

"5. Fourth Cooks and Coach Buffet Cook's Helpers."

Briefly, the essential duties in the various classes in all groups are as follows:

(a) Fourth cooks and coach buffet cook's helpers are a class of employees who usually are employed without previous cooking experience. Their duties generally are to wash dishes and cooking utensils, dispose of refuse, clean up the cooks' compartment of the dining car and assist with any task in the kitchen assigned to them.

(b) Third cooks, dish-up men and cafe car cooks clean and prepare vegetables for cooking,

make coffee under supervision of the chef, maintain steam table and other service facilities in the cooks' compartment and when meals are served dish up the vegetables and pass out the food orders to the waiters, and to the extent of time available assist the second cook in his duties.

(c) Second cooks and coach buffet cooks prepare and cook all fried foods such as meat, fish, eggs and potatoes, make pies, griddle cakes, hot breads such as muffins and do the general range work incidental to meal service, supervise the cooking of vegetables and clean out and maintain the food storage lockers assigned to them and assist the chef in the performance of his duties.

(d) Chefs are in complete charge of the dining car kitchen under the supervision of the steward. The chef is directly responsible for the ordering, use and disposition of all kitchen supplies and all kitchen employes report directly to the chef. He cuts and prepares for cooking all fresh meats and cooks and serves all meats except those cooked and served by the second cook, which are under the chef's supervision. He personally handles all items prepared and served from the charcoal broilers and items roasted in the ovens except those prepared under his direction by the second cook. In addition, he prepares all soups and sauces with the assistance of the second cook, and he plans the menus in conjunction with the dining car steward.

(e) The chef-caterer, who is employed only on Group AA—Selective Runs where chefs are not employed, performs the same duties as those performed by chefs in Group A standard runs except that the duties of the chef-caterer involve the handling of a wider variety of foods because of the higher type of dining car service afforded on those runs, which is explained in detail in item (4) hereof. The complete duties of all employes in the cook's craft are set forth in detailed instructions which are given to all employes in the cook's craft.

(3) As indicated in Rules 19 and 20, the seniority groups are classified according to the type of train operated and seniority classes are the various job classifications in the cook's craft. Each of the seniority groups listed in Rule 19 has within such group each of the seniority classes listed in Rule 20, except that the first class covering Chef-Caterer is found only in Group AA (Selective Runs). Different rates of pay apply in the various groups and in the various classes within each group. The highest paid position is that of Chef-Caterer in Group AA (Selective Runs), the rate as of the date hereof being \$344.00 per month, and the lowest paid positions are those of Coach Buffet Cook's Helpers found in Groups AA and C and Fourth Cooks found in Groups AA, A and B, the rate as of the date hereof being \$236.40 per month. Progression from the lower seniority classifications in any particular seniority group is the result of experience and training received on the job by the



incumbents of the lower-rated classes and the acquisition of seniority in the group.

(4) The dining car service on the Company's trains varies in accordance with the class of train operated. For example, on the Company's streamline trains (Seniority Group AA—Selective Runs), the quality of the dining car service furnished is of the highest and the menu affords a very wide selection, all of which requires that the chefs and cooks employed on those trains have the highest training and experience. On the standard dining car runs (Seniority Group A), the dining car service furnished is not of such high and extensive caliber and quality as found on the streamline trains, with the result that the cooks and chefs on such trains need not be as highly qualified as those found on the Group AA trains. The kind and quality of dining car service furnished on Group B, or Challenger, dining car runs, during the period that the Company operated the Challenger trains, was quite limited in variety and designed to afford meals at lowest possible prices. The type and variety of the food served on the Group C, or cafe-lounge, coach buffet and cafe car, runs is even more limited than that available on the Group B, or Challenger, dining car runs. The preparation necessary to serve the food on the Group C runs is necessarily limited in scope, resulting in less experience being required on the part of the cooks and chefs in this group. The highest trained class of cooks and chefs were and are necessarily employed in the higher groups of dining car service.

(5) The Company in operating its dining car service and in filling the superior positions in its cook's craft has operated on the principle of promoting qualified employes to the superior positions on the basis of seniority, fitness and ability and, except as to positions in Group AA—Selective Runs, seniority governs promotions where fitness and ability are sufficient, as provided in and uniformly applied under Part I, Article V, Rule 26 (a) of the agreement, which is quoted herein in item (9). This is soundly premised on the needs of the service, which necessarily dictates that better qualified employes be assigned to the superior positions. By virtue of this fact new employes without regard as to whether they are colored or white are generally first employed in the inferior groups and classes.

(6) During the four-year period preceding July 6, 1949, employes in the cook's craft have been promoted to all groups and classes from the lower groups and classes, and this is true both as to colored cooks and white cooks. More colored persons have been employed in the various classes and groups comprising the cook's craft during the four-year period immediately preceding the filing of the complaint in the above-entitled action than white persons. During the period commencing January 1, 1945, and ending July 6, 1949, the Company hired 2737 persons as employes in the cook's craft. Of this number 953 were white persons and 1784 were negroes. Since, as pointed out above, the superior

chefs' and cooks' positions are filled, as vacancies occur, by promoting, upon appropriate bulletin and bid, those qualified employes in the lower seniority groups and classes, without regard to the employes' race or color, and since the greater proportion of new employes hired are negroes, the Company's purpose is not that of driving all negroes from its service or to oppress them or force them to remain in inferior seniority groups and classes.

(7) As provided in Rule 22 (a) quoted herein in item (9), all non-temporary positions in the cook's craft are filled pursuant to appropriate bulletins which are issued by the Company. Those employes who desire to be considered for assignment to the positions bulletined submit applications therefor in writing. These are sometimes referred to as "bids" and are filed with the Company officer whose name is signed to the bulletin. This application must be made within ten days from the date of the bulletin and an assignment to the position bulletined will be made within twenty days from the same date. The foregoing is more particularly set forth in Part I, Article V, Rule 22(b), reading as follows:

"(b) An employe desiring a bulletined position must file written application with the officer whose name is signed to the bulletin within ten days from the date of bulletin and an assignment shall be made within twenty days from date of bulletin. An employe applying for more than one vacancy or new position bulletined at the same time must indicate preference."

Rule 26(a) quoted herein in item (9), as uniformly applied to all employees, both white and colored, in the cook's craft, has governed in the assignments to the positions bulletined.

The Company has in all instances given consideration to bids from any of its employees on any position bulletined. All bids received are considered in making assignment to the bulletined position and no colored employee who has submitted a bid for a bulletined position has been denied assignment to a position to which he was entitled under the provisions of the agreement as uniformly applied to both colored and white employees.

(8) There is no provision in the agreement which provides for a different application of its terms to white employees than to colored employees. It does not discriminate in any way against any employees because of their race or color. Further, in the application of the agreement it has been applied uniformly to white and colored employees in the various groups and classes, no preference being given to white employees over colored employees.

(9) The agreement provides that positions in the cook's craft other than temporary will be filled after bulletin has been posted and eligible employees have submitted bids in accordance with the provisions of Rule 22(a) and Rule 26(a) of the agreement, reading:

“Rule 22. Bulletining Positions. (a) All new positions or vacancies shall be promptly bulletined

on bulletin boards at all terminals affected. Positions of thirty days or less duration shall be considered temporary and may be filled without bulletining. Positions or vacancies of indefinite duration and/or known to be of more than thirty days duration shall be bulletined as temporary positions and again bulletined as soon as known to be permanent."

"Rule 26. Promotion. (a) Promotion shall be based upon seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail, except that fitness and ability shall govern assignments to selective runs, Group AA."

(10) Seniority in the cook's craft is acquired under the agreement and a seniority date accorded in the particular group and class in which the employe first completes 90 days of continuous service. A seniority date is accorded in all lower classes and all lower groups corresponding with the date seniority is acquired in a higher group. Rules 17(a) and (b) of the agreement set out with particularity the manner in which seniority is first acquired in the various groups and classes. Those rules read:

"Rule 17. Seniority Dates. (a) An employe will be accorded a seniority date only upon acquiring an employment relation in accordance with the provisions of Rule 14 of this Part I, and can retain the seniority date so accorded only during the retention of such employment relation. No employe may be accorded seniority date on more than one local district seniority roster at the same time.



Where two or more employes enter upon their duties at the same hour on the same day, the employing officer shall at that time designate their respective rank.

“(b) The seniority date accorded an employe acquiring an employment relation after the effective date of this agreement shall be the date on which the ninety days of continuous service required by the provisions of section (a) of Rule 14 of this Part I commenced. Such date will be accorded in the seniority class and group in which such ninety days of continuous service is completed, in all lower classes in that group, and in all corresponding and lower classes in all lower groups.”

(11) An employe who has once established an employment relationship and has been accorded a seniority date in the cook's craft can acquire seniority in a higher group and class only by assignment by bulletin to a bulletined position or vacancy in such higher group and class. This is set out with particularity in Rule 17(c) of the agreement, reading:

“(c) An employe will be accorded a seniority date in a higher group or class in which he has not previously acquired a seniority date only upon assignment by bulletin to a bulletined position or vacancy in such higher group or class. The seniority date so accorded will be the date of assignment and will also be accorded in all intermediate groups and classes. An employe assigned to a position in a higher group or class will retain the seniority



dates held in all lower groups and classes and continue to accumulate seniority therein."

The foregoing rules for acquiring seniority are not applicable to employment in temporary positions or vacancies. Such positions may be filled without bulletin in accordance with provisions of Rule 22(a) quoted in item (9) herein. When an employe from a lower group and class is temporarily filling a position in a higher group and class seniority therein is not acquired, since by the provisions of Rule 17(c) hereinabove quoted seniority can be acquired only by assignment to a bulletined position. This rule applies and has been applied uniformly to both colored and white employes.

There has never been an instance under the agreement where an employe was assigned by bulletin to a bulletined position in a higher group and class than which he held seniority at the time the bulletin was issued who has not been accorded seniority in such higher seniority group and class at the time assigned thereto.

(12) The agreement does not in any way restrict the Company in the operation of its dining car service, and the Company may as it sees fit establish or discontinue such dining car runs as it alone may determine. This is recognized by the provisions of paragraph (b) of Rule 2, Article II, Part I of the agreement, reading:

"(b) Dining car runs as listed herein are subject to discontinuance and change to meet changes in dining car or train service."

This is also recognized in Part I, Article V, Rules

24(a) and (b), which provide for the exercise of seniority on a system basis when regular established runs are abolished. Those rules read as follows:

“Rule 24. Exercise of Seniority—System Seniority District. (a) System seniority may be exercised only by the regularly assigned incumbents of positions on regular established runs (not including seasonal or extra runs) which are abolished, who are unable, in the exercise of their seniority, to hold in any group in their local seniority district a position in the seniority class in which they were employed at the time the run was abolished.

“(b) An employe eligible to exercise system seniority, in accordance with section (a) of this Rule, may displace only the junior regularly assigned employe in the lowest seniority group on the system roster of the class in which the employe was working at the time the run was abolished.”

(13) In 1935 the Company commenced the operation of what was known as its “Challenger” trains, i.e., “Los Angeles Challenger,” and “San Francisco Challenger.” The dining cars on the “Los Angeles Challenger” were operated between Los Angeles and Omaha, with home terminal for the crew members of the cook’s craft to be at Los Angeles, and the dining cars on the “San Francisco Challenger” were operated between Omaha and Ogden, with home terminal at Omaha.

Those trains provided, as I have stated heretofore, limited dining car service consisting of low-priced meals.

Seniority Group B (Challenger dining car runs)

was agreed upon between the Company and the Union as the seniority group applying to this class of service, in the same manner as Seniority Group AA was established to apply to the class of service on the streamline trains and Seniority Group A was established to apply to the class of service on the standard dining car runs.

In June, 1946, post war train service was established which involved expansion of the Los Angeles-Chicago and San Francisco-Chicago passenger train service. The dining cars operating on the Los Angeles Limited (dining car service manned by Group A employes) were extended to operate between Los Angeles and Chicago and a new train known as the "Transcon" (dining car service also manned by Group A employes) was established operating dining car service between Los Angeles, California, and North Platte, Nebraska.

At the same time a rearrangement of train schedules providing an earlier arrival time and later departure time of the Challenger trains from the Los Angeles terminal eliminated the necessity for dining cars to operate into Los Angeles, terminating this run at Las Vegas, Nevada, which arrangement necessitated the transfer of the operating home terminal of the dining car crews from Los Angeles to Omaha. This change in Challenger train operation abolished all Group B cooks' positions in Los Angeles, and an equal number of Group B cooks' position were established in the Omaha District.

The establishment by the Company of the new

train known as the "Transcon" and the extension of the dining car operation on the Los Angeles Limited through to Chicago, the dining car service of which was manned by employes of Group A of the cook's craft, permitted the employes in Group B whose positions had been abolished by discontinuance of the operation of the Challenger trains into the Los Angeles terminal to bid on the positions on the "Transcon" trains and the Los Angeles Limited, and employes holding Group B positions were assigned upon appropriate bulletin and bid to fill the Group A positions newly created, at which time such employes acquired a Group A seniority date.

(14) In May of 1947 part of the Company's Challenger trains were discontinued and in October of that year the remainder were discontinued, with the result that all positions in Group B were abolished and employes holding seniority in Group B who had not acquired a seniority date in Group A could exercise their seniority only in lower seniority groups and classes, as provided in paragraph (b) of Rule 23, Article V, Part I of the agreement, reading as follows:

"(b) An employe who is displaced must first exercise seniority in the seniority class of the seniority group in which he is working at time of displacement, and if unable to hold a position in such seniority class, may exercise seniority to displace an employe in any class and group in which he holds a seniority date, except that in districts with more than one home terminal, an employe may,

in the first instance, exercise his seniority to displace an employe in any class and group in which he holds a seniority date if necessary to enable him to continue to operate out of the same terminal."

On January 1, 1947, prior to the discontinuance of any of the Challenger trains, the following number of employes held seniority in the cook's craft in Groups A and B:

	Group A	Group B	Total
White .....	110	31	141
Colored .....	259	87	346

On January 1, 1948, subsequent to the discontinuance of all Challenger trains, the following number of employes held seniority in the cook's craft in Groups A and B:

	Group A	Group B	Total
White .....	97	12	109
Colored .....	250	49	299

As of the time the Company discontinued its Challenger trains a number of those persons listed in paragraph I of the amendment to the complaint, as well as in Appendix A attached to the original complaint filed herein, who are employed in the cook's craft did not hold seniority in a seniority group above Group B and such persons could exercise their seniority only in Group C, the lower seniority group.

(15) During all of the period since the agreement has been in effect, that is since June 1, 1942, and even prior thereto, and prior to the discontinuance by the Company of its Challenger train



service there were numerous occasions where positions were bulletined for assignment in Group A for which employees holding Group B seniority and assigned in the Challenger train service did not submit bids, although if they had many of such employees would have been assigned to Group A positions and acquired seniority in that group at that time.

It is the belief of this affiant that the reason why bids were not submitted by employees having Group B seniority in the cook's craft and holding assignment on the Challenger trains was because the requirements of the Challenger trains were less burdensome than the requirements of the service in Group A runs and the difference in the compensation between Group A runs and Group B runs was slight, not exceeding ten dollars per month and in some instances less than ten dollars per month.

As heretofore indicated, as of the time the Company discontinued its Challenger train service certain of the employees in Group B of the cook's craft were given assignments pursuant to bulletining and bidding in Group A of the cook's craft and some of them were assigned positions in Group C. However, some of them were unable to secure an assignment except certain temporary work in Group A which would not enable the establishment of seniority date in that group under the provisions of Rule 17(c) of the agreement quoted herein in item (11). Plaintiff Thomas E. Hayes is one of those persons who had not acquired Group A seniority as of the time the Challenger trains were



discontinued. He did acquire seniority in Group A on July 7, 1948.

(16) The dispute involved in the above-entitled action arises out of the fact that upon the discontinuance of the Challenger trains a number of the persons named in paragraph I of the amendment to the complaint and Exhibit A attached to the original complaint filed herein were unable to obtain an assignment under the agreement rules because of their lack of seniority in Group A. While some of the employes so affected were negroes, many of the negroes employed in the cook's craft were not so affected because of the fact they held Group A seniority at that time. The dispute involved in this action is an attempt to obtain a different seniority status contrary to that provided for under the agreement as uniformly and equally applied to all employes, both colored and white, by alleging racial discrimination which does not exist.

(17) For further information as to the application of the agreement as between white and colored employes in the cook's craft, reference is made to the affidavit of Mr. H. A. Hansen, dated August 26, 1949, filed in this action.

/s/ H. I. NORRIS.

Subscribed and sworn to before me this 10th day of September, 1949.

[Seal] /s/ [Indistinguishable],

Notary Public in and for said  
County and State.

[Endorsed]: Filed September 15, 1949.

[Title of District Court and Cause.]

AFFIDAVIT OF THOMAS E. HAYES, ONE  
OF PLAINTIFFS HEREIN, IN OPPOSITION  
TO THE MOTIONS OF DEFENDANT  
UNION PACIFIC RAILROAD AND DEFENDANT  
DINING CAR EMPLOYEES' UNION,  
LOCAL 372.

State of Nebraska  
County of Douglas  
City of Omaha—ss.

I, Thomas E. Hayes, of 2928 N. 24th Street, City of Omaha, State of Nebraska, being first duly sworn, depose and say:

I am making this affidavit for the purpose of enlarging upon an affidavit previously made by me and verified September 22, 1949, and I incorporate by reference all the allegations contained in the first two pages of that affidavit.

The grievances set forth in the original complaint herein have been the subject of written protests to both defendant railroad and defendant union ever since 1946 and during all these years defendant railroad has engaged in the practices set forth in the complaint herein and defendant union has aided and abetted defendant railroad in the course of discrimination against Negro cooks, set forth in the complaint.

Finally, it became apparent that legal action would have to be taken and accordingly a committee

was formed of which I was Chairman, for the purpose of instituting legal proceedings. As a result, all of the persons listed in the complaint and the amendment thereto as plaintiffs signed retainer agreements with Archibald Bromsen, Esq., an attorney at law, with offices at 450 Seventh Avenue, New York City, a copy of which agreement is attached to, marked Exhibit "A" and made a part of an affidavit verified by Bennie Bates on the 21st day of September, 1949, which will subsequently be filed herein.

Thereafter every person who had signed a retainer agreement with Archibald Bromsen was notified by him in writing that the San Francisco law firm of Gladstein, Andersen, Resner & Sawyer, had been employed to institute this litigation in this district and division and conduct the same, a copy of which notice is hereto attached, marked Exhibit "A" and made a part hereof. Since April 25, 1949, the date of the said notice, only one of the persons named as plaintiffs in this action has made any request to either Archibald Bromsen or any member of the said San Francisco law firm to withdraw his name as plaintiff in the litigation.

The basic discrimination complained of in the complaint herein, is that when initially hired by defendant railroad, Negro cooks are classified as Class B under Rule 19 of the Collective Bargaining Agreement between the defendants, effective June 1, 1942, whereas white cooks are from the time of hiring classified as Class A under said Rule, regardless

of any other consideration and these classifications are in no sense dependent upon fitness and ability. This is the question of fact common to all persons named as plaintiffs herein and the question of law common to all of them is whether or not discrimination of this character based solely on race, is a violation of the basic principles of the said Railway Labor Act.

Affiant has read the objections to plaintiff's interrogatories dated August 25, 1949, and particularly Objection V thereof, which alleges that the persons named therein have never at any time been employed in the Dining Car Service of defendant railroad. The persons in question are Horace Burnett, Leadis Kettor, William B. Regan, Leonard D. Rivers, John J. Shanks and Paul E. Woods. The statement made that these persons have never been employed at any time in the Dining Car Service of defendant railroad is unequivocally false with respect to each of the individuals named above. Horace Burnett, William B. Regan and John J. Shanks, were working for the Dining Car Department of defendant railroad last year. John J. Shanks worked under Chief Cook Oliver E. Odom, out of Los Angeles, California. Leadis Kettor and Paul E. Woods were working out of California in the Dining Car Department as late as March, 1949. Leonard D. Rivers is still working out of Omaha, Nebraska, as a cook in the Dining Car Department of defendant railroad.

Affiant has also read the affidavit of H. A. Hansen, verified the 26th day of August, 1949, attached to the

said Objections to Interrogatories filed on behalf of defendant railroad, as well as the affidavit of Henry J. Norris, verified the 10th day of September, 1949. In the affidavit of Hansen on the last page thereof, appears the following language:

“Certain employees in the cook’s craft whose seniority rights were first acquired in Group B, of whom the plaintiff Thomas E. Hayes is one, have made claim that the original date upon which they acquired seniority in Group B should apply also as their seniority in Group A retroactive to the date the seniority was acquired in Group B. Such action would adversely affect employees, both colored and white, holding seniority in Group A and violate said agreement effective June 1, 1942. The requested action is in effect a request for a change in the collective bargaining agreement. Affiant has been informed by the collective bargaining representative that the employees thus adversely affected are not agreeable to the requested action. Affiant further states that the controversy arising out of the aforesaid claim and disagreement between members of the cook’s craft does not arise from any discrimination as between white and colored employees in the application of seniority rights.”

The above-quoted section from the affidavit of Hansen is not true. No claim has ever been made that the seniority date acquired in Group B should apply also as a seniority date in Group A. Likewise it is not true that the claims of plaintiffs in this action do not arise from any discrimination as be-



tween white and colored employes and the application of seniority rights.

The facts are that in the Denver, Portland and Ogden districts, there have never been any Challenger or Class B runs. Yet notwithstanding this fact, every Negro cook when initially hired for service in these districts was regardless of every other consideration and simply because he was a Negro given Class B status under Rule 19 of the collective bargaining agreement between defendant railroad and union, effective June 1, 1942. Whereas, every white cook initially hired in these districts was classified as A under said Rule even though totally lacking any previous experience.

In the affidavit of H. J. Norris, verified September 10, 1949, and filed herein, on page 4 thereof, beginning with line 24, the following language appears:

“Progression from the lower seniority classification in any particular seniority group is the result of experience and training received on the job by the incumbents of the lower rated classes and the acquisition of seniority in the group.”

This statement, as far as Negro employes of the Dining Car Department of defendant railroad, is extremely misleading, if not false in its entirety. In order to demonstrate this, it will be necessary to refer to the affidavit of Stephen R. Auguston, verified August 14, 1949, and filed herein. Attached to that affidavit is a tabulation of various names, classifications of position, and Group A seniority date.



From an examination of the last column of this tabulation, the one nearest the right hand side of the page entitled Group A Seniority Date, it is impossible to determine when the seniority date was actually acquired. Take for example the case of John Bukey, the ninth name on the tabulation, classified as Chef and given a seniority date of December 29, 1919. There is nothing in the data relating to John Bukey which throws any light upon the time when this seniority date was accorded. Now as a matter of fact, the System Roster of Kitchen Employes' Seniority dated January 1, 1938, shows that John Bukey got a seniority date in Group B-1, classification Chef, on December 29, 1919. The Auguston affidavit says that John Bukey got a Group A seniority date of December 29, 1919. This is a palpable and deliberate attempt to mislead the Court, because the fact is that if John Bukey had a seniority date in Group A, he has been awarded this date recently and since 1938, because the group seniority of John Bukey on the System Seniority Roster of Kitchen Employes, dated January 1, 1938, gives him seniority in Group B and not in Group A. The Auguston affidavit would have been more informing if it had stated the precise date when John Bukey's name appeared for the first time on the Seniority Roster of defendant railroad as having a seniority date of December 29, 1919, in Group A.

According to the Auguston affidavit, John Bukey acquired his seniority date in Group A on December 29, 1919.

It is apparent that the Auguston affidavit is designed to give the impression that John Bukey, who has been in the employ of defendant railroad for approximately thirty years, has during that entire period had Group A seniority.

Furthermore, John Bukey today has only two year's Chef Cook Class A service to his record, which demonstrates the complete falsity and misleading character of the Auguston affidavit. The truth of the matter is that John Bukey never obtained a seniority date in Group A until recently and that is the reason why after thirty year's of service he can only show employment in Group A of about two year's duration.

The Auguston affidavit and the tabulation attached thereto was deliberately phrased to give the impression that the seniority dates set forth in the tabulation were actually accorded on the seniority date set forth, whereas the truth is that the seniority dates upon that tabulation were not acquired on the date shown, but very much later and as a result of the struggle which the Negro cooks employed by defendant railroad have been waging in the last four or five years.

Another name upon the tabulation attached to the Auguston affidavit is that of Edward M. Jones, who was classified as a Chef with a seniority date in Group A of August 5, 1916. This date is not the date when Group A seniority was established by him. He is shown on the System Seniority Roster of Kitchen Employes, dated January 1, 1938, as a Chef in

Group B, not Group A. Again the Auguston affidavit attempts to make it appear that his seniority date in Group A was actually accorded to him on August 5, 1916, which is not the fact. This situation is almost identical with that of John Bukey, except that Jones has three year's greater service and still can only show about two year's employment in Group A as a Chef. The fact is that the date when Jones and Bukey were actually awarded seniority date in Group A, is April 12, 1949, a fact which the Auguston affidavit deliberately and intentionally conceals.

I, myself, was not accorded a seniority date in Group A until July 7, 1948, although I was employed as a Chef Cook by defendant railroad in 1936 and 1937, and by my employment fully established my fitness and ability for the classification, yet when I was re-employed by defendant railroad on October 23, 1942, I was employed with that date as a seniority date in Group B and as Second Cook. Yet it was not until July 7, 1948, and then only as a result of struggle waged by the Negro cooks employed by defendant to enforce their seniority rights that I was accorded a seniority date in Group A.

Regardless of the seniority dates shown in the tabulation attached to the Auguston affidavit, every seniority date there shown in Group A has been acquired solely as a result of the vigorous struggle waged by the Negro cooks employed by defendant railroad to exercise their seniority rights under the agreement of 1942.

The Auguston affidavit in its entirety is composed of a tissue of deliberate falsehoods, half-truths, and misleading statements, as is shown by the following example.

On page 1, line 28, it is stated that the defendant Union Local 372 was organized on July 20, 1933, for the purpose of representing for collective bargaining purposes certain employes of Union Pacific Railroad, including kitchen employes and bar tenders on passenger trains operated by the said railroad. This is perhaps not a material misrepresentation because there is no issue here involving bar tenders, but it merely goes to show that the Auguston affidavit is not an honest or truthful statement of the facts, material or otherwise. The fact is that up to about a year ago, jurisdiction of the bar tenders was not vested in Local 372, nor was that local organized for protecting in any way the rights of the bar tenders. The bar tenders until quite recently have been subject to the jurisdiction and members of Local 465.

Again at page 2, of the same affidavit, commencing with line 26, the statement is made that the defendant union does not and has not at any time mentioned in the complaint, discriminated in any way against Negroes, but on the contrary admits Negroes to its membership upon exactly the same terms and conditions, and accords them exactly the same rights and privileges as white men without any discrimination of any kind or nature between the two.

This statement is an artful mixture of truth and



falsity designed to mislead the Court. It is true that defendant Local 372 does admit Negroes to membership and ostensibly upon the same terms and conditions as white persons, but it is not true and the maker of the affidavit knew it was not true that the Negroes have been accorded exactly the same rights and privileges as white men without any differentiation of any kind or nature between the two.

Defendant Local 372 is the collective bargaining agent of all its members and is required by law to represent all without discrimination. Yet ever since the collective bargaining agreement of 1942 was executed, the officers of defendant Local 372, notably including the affiant Stephen R. Auguston, have with full knowledge of the facts, failed to take any remedial action on behalf of the Negro members of the Local against the discriminatory practices of defendant railroad against its Negro employees in the Dining Car Department.

I have repeatedly, both verbally and in writing, brought to the attention of Auguston, the facts set forth in this affidavit and in the complaint herein, and he has completely ignored the situation and threatened to drive me off the railroad.

On page 3, line 15, of the Auguston affidavit, the following statement appears:

“Said agreement secures to Negroes exactly the same rights and privileges as white men and does not differentiate in any way between the two.”

This statement is verbally true, but it ignores the

real issue, which is discrimination against Negroes at the time they are hired by the defendant railroad. Ever since 1942, and as a matter of fact, for many years prior thereto it has been the uniform practice of defendant railroad at the time Negroes are first employed to give them seniority dates in Group B, notwithstanding the fact that by reason of fitness and capacity they were entitled to employment in higher group classifications. On the other hand, it has been the undeviating practice of defendant railroad in the case of the initial employment of white cooks, to give them seniority dates in Group A even though totally lacking in experience and capacity for the job, and this practice has been pursued with the full knowledge and approval of defendant Local 372 and with the complete support of the same Stephen R. Auguston, who says in his affidavit, page 4, lines 18 to 22, that:

“If there has been any instance in which the defendant railroad in selecting and hiring a new employe, selected and hired a white man in preference to a Negro, the defendant Union had no voice or part whatever in such selection or hiring.”

The fact is that without the support of the defendant Local 372 and of the affiant Auguston, the railroad would not have dared pursue the discriminatory policies complained of.

Again Auguston states on page 5, lines 18 to 25, the following:

“If defendant railroad at any time mentioned in the complaint, committed any act of racial discrimination in respect to any employes represented by



defendant union, defendant union was and is not aware thereof. Neither plaintiff or any other person mentioned in the complaint, called any such alleged act of discrimination to the attention of defendant union or made any request that defendant union "take action with respect thereto."

The above quotation is not a half-truth or a misleading statement. It is an absolute and unqualified falsehood and known by the affiant Auguston to be false at the time he swore to it on August 14, 1949.

I have in my possession the following correspondence between the affiant Auguston and myself, dealing with the subject of discrimination:

1. Copy of letter to Auguston, dated April 10, 1946.
2. His reply, dated May 14, 1946.
3. Copy of letter to Auguston, dated February 14, 1948.
4. Copy of letter to Auguston, dated March 31, 1948.
5. Letter from Auguston to French L. Spencer, dated April 10, 1948.
6. Letter to me from Auguston, dated April 10, 1948.

Moreover I discussed with Auguston, as long ago as May 10, 1946, the whole subject of discrimination against Negroes in the dining car service of defendant railroad and he then and there admitted to me that the discriminatory practices of which I complained were not right.

The gist of the discrimination practised by de-

fendant railroad against Negro cooks in its dining car service with the full approval, acquiescence and support of defendant Local 372, is as said above, the discrimination in initial hiring, that is the segregation of all Negro cooks at the time of original hiring in to seniority Group B and the preferential treatment accorded white cooks at the time of original hiring by classifying them in the higher seniority Group A. From this original discrimination stems all the discrimination of which complaint is made, and as a result of this discrimination it becomes practically impossible for a Negro cook, no matter how much capacity and fitness for the job he may have, to gain seniority in any group higher than that in which he is initially hired.

Under the terms of the agreement of 1942, and particularly Point I, Article IV, Rule 17 (c), it has been impossible for the Negro cooks in defendant railroad's employ to obtain a seniority date and acquire the seniority in a higher class than that to which they were assigned at the inception of their employment relations, except in accordance with the terms of said Rule 17, which provides that an employe will be accorded a seniority date in a higher group or class in which he has not previously acquired a seniority date, only upon assignment to a bulletined position or vacancy in such higher group or class, and the seniority dates so accorded will be the date of assignment and will also be accorded in all intermediate groups and classes, and an employe assigned to a position in a higher group or

class will retain the seniority held in all lower groups and classes and will continue to acquire seniority therein.

In practice Negro cooks were not permitted to bid in higher groups and classifications, or if permitted their bids were ignored and the bulletined positions were filled by defendant railroad with the full support and approval of defendant Local 372, by white employes possessing far less experience, ability, fitness and capacity, than the Negro cooks who had filed bids.

In the affidavit of H. J. Norris, consisting of fourteen pages, verified September 10, 1949, and filed herein the following language appears on page 4, lines 24 to 28:

“Progression from the lower seniority classification in any particular seniority group is the result of experience and training received on the job by the incumbents of the lower rated classes in the acquisition of seniority in the group.”

Again quoting from the same affidavit at page 5, line 23 and following:

“The Company in operating its dining car service and in filling the superior positions in its cook’s craft, has operated on the principle of promoting qualified employes to the superior positions on the basis of seniority, fitness and ability.”

These statements indicate the policy which ought to be pursued, but they have no relation whatever to the policy of discrimination that has actually been followed.

Again I quote from the same affidavit, page 6, lines 2 to 4:

“By virtue of this fact, new employes, without regard as to whether they are colored or white, are generally first employed in the inferior group and classes.”

This last statement is not true, because as I have said it has been the uniform practice of the defendant railroad to hire white employes in seniority Group A and Negro employes in seniority Group B regardless of any considerations of length of service, capacity, fitness or ability.

The vice of the entire Norris affidavit is disclosed by his Point 16, on page 13, commencing at line 32, which reads as follows:

“The dispute involved in the above-entitled action arises out of the fact that upon the discontinuance of the Challenger trains, a number of persons named in Paragraph I of the amendment to the complaint and Exhibit ‘A’ attached to the original complaint filed herein, were unable to obtain an assignment under the agreement rules because of their lack of seniority in Group A.”

That is undoubtedly the case, but all the persons listed in the complaint and the amendment thereto, are Negroes and why did they have no seniority in Group A? Because of the discriminatory practice of defendant railroad in its initial hiring when it arbitrarily accorded to all Negroes a seniority date in Group B and all whites a seniority date in Group A.

The discussion in the Norris affidavit of the Challenger runs is a false quantity because the persons named in the complaint and in the amendment thereto operated in districts where there were no Challenger runs.

The complaint is predicated upon the theory that there was this initial discrimination against Negroes at the time of original hiring and that as a result thereof, they were never able to acquire any seniority in higher groups and classes.

It now appears from the affidavit of Auguston that some of the persons have been accorded seniority dates in Group A at times not disclosed by the affidavit and solely as a result of the terrific pressures that have been generated during the last four or five years in the struggle of the Negro cooks for the right to exercise their seniority, but the discrimination still exists because John Bukey and Edward M. Jones, after thirty and thirty-three years of satisfactory service, have been able to acquire only about two years' service in seniority Group A.

The real issue in this case is the discrimination against the Negro cooks at the time they are first hired, and every evil of which they complain flows from this initial discrimination. It follows them through their entire period of employment and prevents them from building up real seniority in the seniority groups and classes higher than those to which they are arbitrarily assigned upon their first employment.



The mechanism through which the discrimination has been brought about involves the following steps:

a. The original discrimination at the time of initial hiring.

b. The refusal to accept bids by qualified Negroes for bulletined positions in higher seniority groups and classes.

c. The inability of the Negro cooks to acquire seniority even when assigned as a result of bids to employment in higher seniority groups and classes, because they have no opportunity to build up seniority in those groups and classes and are constantly required to yield their positions to white cooks with greater seniority in the groups and classes, even though the period of service in the employ of defendant railroad is far less than that of the displaced Negroes. And the reason why the Negro can not hold a bulletined position to which he has been assigned as a result of a bid, in the higher group or class, is that owing to the initial discrimination at the time of employment, he has been confined to a lower seniority group or class, whereas the white cook from the very day he was employed has had the opportunity to build up seniority in Group A, to which he was initially assigned even though totally lacking in experience.

The discrimination against the Negroes is clearly illustrated by the fact that men like John Bukey and Edward M. Jones, have served continuously in the employ of defendant railroad for thirty and



thirty-three years, respectively, and had during the entire period of time only been able to acquire about two years' seniority in Group A. Thirty and thirty-three years' employment ought to demonstrate fitness and capacity. The fact that these employes have during that period of employment, been able to achieve seniority in a higher group and class and build up two years' seniority therein out of thirty and thirty-three years, demonstrates conclusively the discrimination to which they have been subjected.

It is alleged in the complaint herein that there was discrimination at the time of initial employment and that Negroes were precluded from establishing seniority in higher groups and classes under the agreement of 1942, by defendant railroad through the medium of refusing to accept bids for bulletined positions in the higher groups and classifications, and it is further alleged that the plaintiffs were actually employed in higher groups and classifications, but without assignment, and were therefore precluded from accumulating seniority in the higher groups and classes.

In view of the fact that it now develops, especially from the Auguston affidavit, that certain of the plaintiffs, including me, have been accorded dates in seniority Group A, it becomes necessary to amend the complaint so as to show the effect of the initial discrimination at the time of hiring upon the ability of the Negro cooks to build up seniority in the higher groups and classes. In other words the complaint should be amended to show that the

discrimination which arose upon the initial hiring of the Negro cooks precluded them from achieving their rightful seniority in higher groups and classes, even when assigned as a result of bids to bulletined positions in those classes.

Discrimination can be brought about in various ways, but all of the discrimination existing in this case stems from the initial discrimination at the time of hiring. It makes no difference whether the bids of the Negro cooks to bulletined positions were accepted or rejected, the fact is that whether accepted or rejected they were never in the position to build up substantial seniority in these higher groups or classes, because they were discriminated against at the time of initial hiring.

Wherefore, affiant prays that the Court may be pleased to permit the filing of an amended complaint in accordance with a copy thereof to be first presented to the Court, and further requests that the determination of any application for leave to file an amended complaint be postponed until all pending motions and objections filed by defendants herein be disposed of.

/s/ THOMAS E. HAYES.

Subscribed to and sworn to before me this 15 day of October, 1949.

[Seal] /s/ RAY L. WILLIAMS,  
Notary Public, in and for the County of Douglas,  
State of Nebraska.

My commission expires on 1st day of Sept, 1950.

EXHIBIT "A"

Archibald Bromsen

Attorney at Law

450 Seventh Avenue, New York 1

April 25, 1949

Re: Discrimination Against Negro Cooks by  
Union Pacific Railroad.

Dear Sir:

I want to acknowledge with thanks your retainer of this office in the matter of your above claim for damages due you resulting from violation of your job, seniority and employment rights under the U. S. Railway Labor Act. It is a privilege to represent you and your co-workers in your fight against Jim Crow and discrimination, and I will try to do everything possible to help win for you your lawful rights.

I think you will be glad to learn that in order to help bridge the many miles between us, and to accomplish the most effective handling of your claim, I have retained to work with me—(at no additional expense or obligation of any kind whatsoever to you)—the well known law firm:

Gladstein, Anderson, Resner & Sawyer, Esqs.  
240 Montgomery Street  
San Francisco 4, Calif.

As a result, it will be much easier and more convenient, when it becomes necessary, for you to be

interviewed personally and your case discussed with you directly.

Immediate action on your situation is planned, and your case is going to be placed into Court as quickly as possible for relief from the discrimination practiced against you.

I will continue to keep in touch with you, and, whenever necessary, you will receive communications from my San Francisco associates, Gladstein, Anderson, Resner & Sawyer, Esqs.

When you hear from either of our offices, please help by furnishing immediately whatever information or cooperation we may need, so that your case may be pressed to a successful conclusion as quickly as possible.

Very truly yours,

/s/ ARCHIBALD BROMSEN.

[Endorsed]: Filed October 19, 1949.

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[Title of District Court and Cause.]

AFFIDAVIT OF H. A. HANSEN ADDRESSED  
TO THE 15-PAGE AFFIDAVIT OF  
THOMAS E. HAYES, VERIFIED ON OC-  
TOBER 15, 1949.

State of Nebraska,  
County of Douglas—ss.

H. A. Hansen, of Omaha, Douglas County, Nebraska, being first duly sworn, deposes and says that he is the Manager of the Dining Car and Hotel

Department, Union Pacific Railroad Company, a defendant in the above-entitled action.

Affiant states:

(1) That he has read the 15-page affidavit of Thomas E. Hayes, verified on October 15, 1949, and filed in this cause, and that the information and statements therein made are either entirely false, half-truths, or misleading and inaccurate and in recognition of the fact that it would be impossible to answer and refute in detail all of the false and misleading statements, allegations, assertions and contentions contained in the referenced affidavit, affiant makes this affidavit for the purpose of correcting some of the false, inaccurate, half-true and misleading statements contained in the said affidavit, which are pertinent and relevant to the matters now before this court as the affiant understands them.

(2) Commencing in line 28, page 2 of the referenced affidavit and continuing into line 3 on page 3, it is stated that the basic discrimination complained of is:

“That when initially hired by defendant railroad, negro cooks are classed as Class B under Rule 19 of the collective bargaining agreement \* \* \* whereas white cooks are from the time of hiring classed as Class A under said rule, regardless of any other considerations \* \* \* .”

The Hayes affidavit proceeds to state that:

“This is the question of fact common to all persons named as plaintiff’s herein \* \* \* .”



Language of similar import is found in numerous places in the said affidavit. Affiant states that this statement is incorrect. The fact is that, out of 946 persons (which is the total number of persons who had or have had an employment relation with the defendant railroad company in the cook's craft during the four years preceding the filing of the complaint in the above action), 363 of said number are white persons and 583 are negroes. At the time of the first employment of the said persons, these employes were employed in the following groups and classes:

White			Negro		
Group	Class	No.	Group	Class	No.
AA	3 (Second Cooks)	2	AA	5 (Fourth Cooks)	10
AA	4 (Third Cooks)	9	A	2 (Chefs)	2
AA	5 (Fourth Cooks)	56	A	3 (Second Cooks)	13
A	2 (Chefs)	7	A	4 (Third Cooks)	39
A	3 (Second Cooks)	46	A	5 (Fourth Cooks)	254
A	4 (Third Cooks)	36	B	2 (Chefs)	4
A	5 (Fourth Cooks)	189	B	3 (Second Cooks)	27
B	4 (Third Cooks)	3	B	4 (Third Cooks)	64
B	5 (Fourth Cooks)	15	B	5 (Fourth Cooks)	165
			C	2 (Chefs)	1
		363	C	4 (Third Cooks)	4
					583

Of the 583 negroes who have had an employment relationship with the defendant railroad company during the four years preceding the filing of the complaint in this action, 86 of them are designated as plaintiffs on Exhibit A attached to the original complaint, or in the amendment to the complaint dated August 12, 1949, or in the amendment to the complaint dated September 14, 1949, and of the so-called plaintiffs their classification at



the time they were first employed is shown in the following table:

Group	Class	Number
A	2 (Chefs)	1
A	3 (Second Cooks)	2
A	4 (Third Cooks)	4
A	5 (Fourth Cooks)	6
B	2 (Chefs)	1
B	3 (Second Cooks)	10
B	4 (Third Cooks)	17
B	5 (Fourth Cooks)	45
		<hr/> 86

(3) Commencing in line 16, page 3 of the referenced affidavit, Mr. Hayes asserts that:

“Horace Burnett, William B. Regen and John J. Shanks were working for the Dining Car Department of defendant railroad last year.”

Affiant has caused a further check of the records of the defendant railroad to be made and finds no record of a Horace Burnett and William B. Regen ever having been employed by the Union Pacific Railroad Company in its Dining Car Department; that John J. Shanks was and is employed in the Dining Car Department of the defendant railroad. Mr. Hayes also stated, commencing on line 19, page 3, that:

“The Leodis Kettor and Paul E. Woods (apparently the same person referred to in the original complaint and the amended complaint as Paul E. Woods) were working out of California in the Dining Car Department as late as March, 1949.” (Parenthetical expression added.)

Affiant states that there is no record of any Leodis Kettor having worked in the Dining Car Department of defendant railroad. However, there is a

Leodis Kelton employed in the Dining Car and Hotel Department working out of Omaha Seniority District. Affiant states that he is under the impression that Mr. Hayes is not referring to Leodis Kelton, in view of the letter dated July 24, 1949, written to the affiant by Mr. Kelton. A photo-static copy of this letter is attached to this affidavit, marked Exhibit A, and hereby made a part hereof. Affiant states that he is unable to locate any record concerning Paul or Pall E. Woods. Mr. Hayes also stated, commencing on line 21, page 3, that:

“Leonard D. Rivers is still working out of Omaha, Nebraska, as a cook on the Dining Car Department of defendant railroad.”

This is the first time Leonard D. Rivers has been referred to in this action and affiant state that he is working out of Omaha, Nebraska, as a cook in the Dining Car Department, but his name is not included as a plaintiff in this action.

(4) At line 11, page 4, Mr. Hayes states that:

“No claim has ever been made that the seniority date acquired in Group B should apply also as a seniority date in Group A.”

The affiant states that he has in his possession a copy of a letter from Mr. Thomas E. Hayes dated February 14, 1948, which Mr. Hayes sent to Mr. Steven R. Auguston, General Chairman of defendant union. (This letter was furnished affiant by Mr. Hayes.) This letter is signed by Thomas E. Hayes as “Representative, Dining Car and Food Workers Union.” In this letter Mr. Hayes stated, among other things, that:

“We are demanding the following:

“(1) A complete elimination of all classes, AA, A, B and C because they have been used as a media to segregate and exploit the Colored cooks and to take from them the seniority which they have accumulated with the Union Pacific by their own labor.

“(2) That all cooks, regardless of Race, Color, Creed or National Origin, may exercise their seniority over any employee their junior on any train on the Union Pacific Railroad.”

The elimination of the various seniority classes which Mr. Hayes demanded in his letter of February 14, 1948, above quoted, is tantamount to a claim that the seniority dates acquired in Group B by the various plaintiffs in this action should also apply as seniority dates in Group A.

(5) Mr. Hayes also states in his affidavit commencing in line 16, page 4, that:

“The facts are that in the Denver, Portland and Ogden Districts there have never been any Challenger or Class B runs.”

As a matter of fact, while it is correct to state that there have never been any Challenger runs in the Denver, Portland and Ogden seniority districts, it is not a fact that there were never any Class B runs in those districts because prior to May 1, 1941, there were Class B runs in those districts which were other than Challenger runs. Such Class B runs were, on May 1, 1941, classified as Group A runs.

(6) Commencing at the top of page 5 of the

referenced affidavit, Mr. Hayes discusses the seniority status of Messrs. John Bukey and Edward M. Jones. Prior to the inauguration by the defendant railroad company of its Challenger type of train service in 1935, Messrs. John Bukey and Edward M. Jones had been employed by the Union Pacific as chefs on its train "Los Angeles Limited," as well as on other trains of comparable classification. Under the present collective bargaining agreement effective July 1, 1942, the "Los Angeles Limited" and other trains of comparable classification are classified as Group A—Standard Dining Car Runs. On August 1, 1935, the assignments held by Messrs. Bukey and Jones were classified in Group B—Other Runs.

At the time the agreement of June 1, 1942, became effective, Bukey and Jones were employed on Challenger trains (Group B classification) and all of their seniority as chefs (Class 2) was shown as being in seniority Group B. Through an inadvertent error, the prior service of these two gentlemen on trains comparable to the Group A runs under the June 1, 1942, agreement was disregarded. This mistake, if it remained uncorrected, would have resulted in these two men losing all seniority rights in their assignments as chefs on the better class of trains on which they had worked prior to 1935 when the Challenger trains were established. This error did not come to affiant's attention until the latter part of February, 1949, when second diners were removed from certain of the trains running out of the Los Angeles seniority district,

and opportunities for employment for the cooks in that district were consequently reduced. The matter was brought to affiant's attention by the Superintendent of the Dining Car and Hotel Department at Los Angeles, California, at the time. Immediately affiant entered into an agreement with General Chairman S. R. Auguston of the defendant union, dated March 14, 1949, correcting this mistake in the seniority status of Messrs. Bukey and Jones. A copy of this agreement is attached hereto marked Exhibit B and hereby made a part hereof.

Mr. Hayes attempts to make much of the fact that these two men were not accorded their proper Group A seniority dates until recently. This is of no consequence since the seniority dates accorded these gentlemen by the agreement of March 14, 1949 (Exhibit B), will be the dates governing their right to work and will be used in displacement and promotion under the agreement.

In view of the foregoing, the affiant wishes to point out that the statement at the top of page 6 to the effect that "John Bukey today has only two years' chef cook Class A service to his record" is wholly misleading since the employment opportunities afforded Mr. Bukey (as well as Mr. Jones) are the same as if he had always been listed on the seniority roster as having the seniority date accorded him under the March 14, 1949, agreement (Exhibit B).

With respect to all of the other persons listed on Exhibit A attached to Mr. Auguston's affidavit,



the seniority dates shown (except as they are corrected in this affidavit) are the dates on which the men involved actually acquired such Class A seniority.

Mr. Hayes in his referenced affidavit points out (pp. 6 and 7) that he was not accorded a seniority date in Group A until July 7, 1948, although he states that he was employed as a chef cook in 1936 and 1937. Affiant states that Mr. Hayes was discharged from the service of the defendant railroad company as a chef in 1937 because he had falsified his age in making application for his original employment and when he was rehired in 1942 he was rehired as a Group B second cook which was the only work opportunity available at the time.

(7) At line 29, page 7, Mr. Hayes states:

"The bartenders until quite recently have been subject to the jurisdiction and members of Local 465."

As a matter of fact, bartenders have never been subject to the jurisdiction of Protective Order of Dining Car Waiters, Local 465, which is composed solely of dining car waiter and lounge car attendants.

(8) In the affidavit filed by Mr. H. I. Norris, verified September 10, 1949, at line 32, page 13, he set forth the basis for the complaint in this action. In referring to this statement Mr. Hayes, at line 15, page 12, of his affidavit, states:

"That is undoubtedly the case, but all the persons listed in the complaint and the amendment thereto,

are Negroes and why did they have no seniority in Group A? Because of the discriminatory practice of defendant railroad in its initial hiring when it arbitrarily accorded to all Negroes a seniority date in Group B and all whites a seniority date in Group A."

Affiant states that the fact that many of the plaintiffs have acquired seniority in Group A is evidence itself that there has been no discrimination as between colored and white employees.

(9) Commencing at line 21, page 12, Mr. Hayes states:

"The discussion in the Norris affidavit of the Challenger runs is a false quantity because the persons named in the complaint and in the amendment thereto operated in districts where there were no Challenger runs."

Affiant state that the above quotation does not in any way reflect the true facts. All of the persons named in Exhibit A attached to the complaint, in paragraph I of the amendment to the complaint dated August 12, 1949, and in the amendment to the complaint dated September 14, 1949, operated and were employed in the districts where there were Challenger runs.

(10) Commencing in line 19, page 13, Mr. Hayes states:

"The inability of the Negro cooks to acquire seniority even when assigned as a result of bids to employment in higher seniority groups and classes,

because they have no opportunity to build up seniority in those groups and classes and are constantly required to yield their positions to white cooks with greater seniority in the groups and classes \* \* \*."

Affiant states that presumably Mr. Hayes is referring to the fact that, through the exercise of seniority, employes are sometimes laid off as a result of force reduction. Affiant further states that an employe who is laid off continues to have an employment relation with the defendant company and continues to accumulate seniority in his appropriate class and group and the fact that he is laid off does not in any way affect his seniority status.

(11) Commencing in line 29, page 12, Mr. Hayes states:

"It now appears from the affidavit of Auguston that some of the persons have been accorded seniority dates in Group A \* \* \*." (Emphasis supplied.)

and, commencing in line 22 on page 14, Mr. Hayes also states:

"In view of the fact it now develops, especially from the Auguston affidavit, that certain of the plaintiffs, including me, have been accorded dates in seniority Group A \* \* \*." (Emphasis supplied.)

Affiant states that seniority in any group and class is accorded an employe under the terms of the agreement only upon his filing a bid for a bulletined position and being assigned to such position. In view of this, the fact that certain of the

plaintiffs, including Thomas E. Hayes, have seniority in Group A, should come as no surprise to Thomas E. Hayes.

(12) Affiant states that he has examined and checked the data presented in Exhibit A to Mr. Steven R. Auguston's affidavit dated September 14, 1949, and such a check has disclosed certain minor and inconsequential errors in the listing as made in that affidavit. Attached hereto as Exhibit C and made a part hereof is a statement showing corrections which should be made in the Exhibit A attached to Mr. Auguston's affidavit dated September 14, 1949. There is also attached hereto, marked Exhibit D, consisting of three pages, a revised listing of the persons named in Exhibit A attached to Mr. Auguston's affidavit dated September 14, 1949. This exhibit corrects Mr. Auguston's Exhibit A to reflect the changes which should be made as disclosed by affiant's investigation.

(13) Affiant incorporates the statements made in his affidavit of August 26, 1949, and the statements made in affidavits of Mr. H. I. Norris (Harry I. Norris), dated September 8, 1949, and September 10, 1949, filed in the above-entitled action.

/s/ H. A. HANSEN.

Subscribed and sworn to before me this 21st day of October, 1949.

[Seal] /s/ LOUIS SCHOLNICK,

Notary Public in and for said  
County and State.





7/24-49

MR. H. H. HANSEN

Dear Sir

coming east this trip. MR. Red Ruble.  
(edat) showed me one of those  
papers of T. HAYS. With differ our  
names on it an to my surprise I  
in my name there also I have  
not sign my name to no paper  
at no other. I do not know  
and have my first time  
of seeing to know him I  
don't know why my name  
sign there. I would like to  
know have you have a  
other Fred's Stelton beside me  
employed for that company  
not. then then my name  
in forage. because I have  
and meet Hays of even  
know him. I have not  
sign my name to no other  
of kind.

Sincerely

Fred's Stelton P.O. Box 278  
MARIN CITY Calif



EXHIBIT B

(Copy)

Union Pacific Railroad Company  
(Letterhead)

File 5-8-3

March 14, 1949

Mr. S. R. Auguston, General Chairman  
Dining Car Employees Union, Local No. 372  
3012 N. E. Weidler Street  
Portland, Oregon

Dear Sir:

Referring to our conversation in Omaha last week about the serious mistake which has been made in the seniority status of John Bukey and Edward M. Jones, Los Angeles District, as disclosed by work adjustments on account of temporary changes in the number of crews assigned to Trains 1 and 2:

Prior to the inauguration of the Challenger service in 1935 both of these men had been employed as chefs on the Los Angeles Limited and other trains of comparable classification.

When the agreement dated August 1, 1935, was adopted the assignments held by Messrs. Bukey and Jones were classified in Group B, Other Runs; that is, runs other than the preferred runs which at that time included such trains as the Overland Limited and the Los Angeles Limited.

When the agreement of June 1, 1942, became effective Messrs. Bukey and Jones at that time were employed on Challenger trains in Group B and all of their seniority as chef was reported in Group B, and the prior service they had had on conven-

tional trains which are comparable to standard dining car runs, under Group A in the agreement effective June 1, 1942, was disregarded.

The effect of this was that these two men lost all seniority rights in their assignment as chef on runs on which they had worked prior to the establishment of the Challenger service in 1935; in other words, they were given a "B" date applicable to Challenger runs without any protection in the "A" classification back to 1916 and 1919, when, as a matter of fact, Challenger trains, Group B, were not operating prior to 1935.

This situation should immediately be corrected without waiting for final approval of the Los Angeles District roster dating January 1, 1949, and Edward M. Jones should be given a Group A chef's date of August 5, 1916, and John Bukey date of December 29, 1919.

In order to make this correction without further delay and penalizing work opportunity of these two old time employes will you please indicate your approval of this proper seniority adjustment in space indicated, returning one copy for my file.

Yours very truly,

Original Signed

H. A. HANSEN.

Approved:

/s/ STEVEN R. AUGUSTON,

General Chairman,

Dining Car Employees Union,

Local No. 372.

cc—Mr. J. L. Burns.

# EXHIBIT C

Corrections Made in Statement of Seniority Classifications and Dates on the Group A and Group AA Seniority Rosters Attached to Steven R. Auguston's Affidavit Dated Sept. 14, 1949.

Name	Classification of Position		Group A Seniority Date	
	As Shown	Correction	As Shown	Correction
Lewis Ballard	2nd Cook	3rd Cook	9- 1-47	
Max D. Banks	2nd Cook	3rd Cook	5-23-46	
Bennie Bates	2nd Cook	3rd Cook	9- 1-47	
Henry Bradford	3rd Cook		5- 9-45	No "A" Date
Henry Barnett	-----	Chef	No "A" Date	6- 2-46
Willie R. Burton	3rd Cook	3rd Cook A	8-24-46	
	-----	4th Cook AA	-----	1-10-48 AA
Tom D. Clerkley	4th Cook	2nd Cook	6-16-48	6- 2-46
Leroy Fisher	3rd Cook	4th Cook	7- 1-47	
Edward W. Hamilton	3rd Cook	Chef	A 6- 2-46	
	3rd Cook	2nd Cook	AA 6-12-47	
Robert J. Ivory	4th Cook		5- 1-48	5-21-48
Luther W. Jackson	2nd Cook	Chef	1- 3-45	3-27-45
Marion J. Johns	3rd Cook	2nd Cook	9- 1-47	



Name	Classification of Position		Group A Seniority Date	
	As Shown	Correction	As Shown	Correction
Henry O. Jurey	2nd Cook	Chef	6- 2-46	
Edmond King, Jr.	3rd Cook		5- 3-46	5-23-46
Hayward Maynor	3rd Cook	2nd Cook	6- 2-46	
Eugene McCarthy	3rd Cook	4th Cook	No "A" Date	12- 9-47
John L. Miller	-----	4th Cook	No "A" Date	9- 1-47
Walter M. Moore	3rd Cook	2nd Cook	6- 2-46	4-20-45
Richard O. Morrison	4th Cook	3rd Cook	9- 1-47	
Belford N. Moses	2nd Cook	Chef	6- 2-46	
Edgar Nelson	4th Cook	3rd Cook	10- 8-47	12-18-45
Charles N. Pankey	B.C. Chef	Chef	No "A" Date	9- 1-47
Isaiah Rivers	-----	4th Cook	No "A" Date	6-26-48
John J. Shanks			Not Identified	No Longer Employed
Albert E. Simpson	4th Cook		AA 5-19-47	
	4th Cook	3rd Cook	A 5-20-46	A 7- 9-46
Charles A. Smith	4th Cook	Chef	6- 2-46	9-12-46
Konwood Thomas	4th Cook	3rd Cook	12- 9-47	
Vernell Thompson	4th Cook	2nd Cook	3-19-46	8- 1-46
Harvey H. Trammell	4th Cook	3rd Cook	6- 2-46	
Jerome O. Watson	4th Cook	3rd Cook	7- 7-48	

# EXHIBIT D

Name	Classification of Position	Group A Seniority Date
Thomas E. Hayes	2nd Cook	7- 7-48
Alfred Allen	2nd Cook	8- 5-47
Lewis Ballard	3rd Cook	9- 1-47
Max D. Banks	3rd Cook	5-23-46
Bennie Bates	3rd Cook	9- 1-47
Dewey Berry	4th Cook	11-25-44
Henry Bradford		(No "A" Date)
Clarence O. Buckner	4th Cook	6-16-48
John Bukey	Chef	12-29-19
Richard Buntin	2nd Cook	6- 2-46
Henry Burnett	Chef	6- 2-46
Horace Burnett		(Not Identified)
Willie R. Burton	3rd Cook	"A" 8-24-46
	4th Cook	"AA" 1-10-48
M. J. Clayton	Chef	6- 2-46
Tom D. Clerkley	2nd Cook	6- 2-46
Raymond Corbin	3rd Cook	9- 1-47
Flenoid Cunningham	Waiter	
Ted Eaton	Waiter	
Albert L. Ellington	4th Cook	(No Date)*
Robert M. Ewing	Chef	9- 1-47
Leroy Fisher	4th Cook	7- 1-47
Waymon Fleming	4th Cook	7- 4-48
Freddie Franks	4th Cook	7- 4-48
Langston Gardner	2nd Cook	6- 2-46
Junior L. Gilreath	3rd Cook	9- 1-47
Dennis Hall	Chef	9- 1-47
Edward W. Hamilton	Chef	"A" 6- 2-46
	2nd Cook	"AA" 6-12-47
Elbert L. Holliday	Waiter	
Robert J. Ivory	4th Cook	5-21-48
Luther W. Jackson	Chef	3-27-45
Marion J. Johns	2nd Cook	9- 1-47
Charles Johnson		(No "A" Date)

\* First entered service June 1, 1949, and will not acquire seniority date until he has had ninety days' service.

Name	Classification of Position	Group A Seniority Date
Donald W. Johnson	4th Cook	7-22-47
Edward M. Jones	Chef	8- 5-16
Theodore R. Jones	Chef	6- 2-46
Henry O. Jury	Chef	6- 2-46
Leadis Kettor		(Not Identified)
Edmond King, Jr.	3rd Cook	5-23-46
L. A. King	2nd Cook	6-13-46
Robert Lillard		(No Longer Employed)
John H. Lofton		(No Longer Employed)
Joel Manning	4th Cook	6- 2-46
Osceala Manning	4th Cook	6- 2-46
Frederick J. May	Waiter	
Hayward Maynor	2nd Cook	6- 2-46
Eugene McCarthy	4th Cook	12- 9-47
John L. Miller	4th Cook	9- 1-47
Walter M. Moore	2nd Cook	4-20-45
John W. Morgan	4th Cook	5-23-46
Richard O. Morrison	3rd Cook	9- 1-47
Belford N. Moses	Chef	6- 2-46
Edgar Nelson	3rd Cook	12-18-45
Leonard A. Nelson		(No Longer Employed)
Lawrence Nolbert	Waiter	
Oliver E. Odom	Chef	6- 2-46
Charles N. Pankey	Chef	9- 1-47
William B. Regen		(Not Identified)
Charles M. Renfro	2nd Cook	6- 2-46
Leonard D. Riuers		(Not Identified)
Isiaiah Rivers	4th Cook	6-26-48
Benjamin Robinson	Chef	6- 2-46
Harvey H. Robinson	Chef	6- 2-46
Frank Sanders, Jr.	4th Cook	7- 4-48
Thomas Savage	2nd Cook	9-23-44
John J. Shanks		(No Longer Employed)
John A. Shaw	4th Cook	6-15-48
French L. Spencer	Business Car Chef	(No "A" Date)
Albert E. Simpson	3rd Cook	"A" 7- 9-46
	4th Cook	"AA" 5-19-47
Albert Smith	Waiter	

Name	Classification of Position	Group A Seniority Date
Charles A. Smith	Chef	9-12-46
Thomas R. Spikes	Chef	6- 2-46
Vernon Stamps	2nd Cook	10-10-45
Amos Stoner	(No Longer Employed)	
Willie M. Swanson	4th Cook	6- 2-46
Kenwood Thomas	3rd Cook	12- 9-47
Vernell Thompson	2nd Cook	8- 1-46
Harvy H. Trammell	3rd Cook	6- 2-46
Robert C. Turner	3rd Cook	7-19-48
Livinston S. Vaughn	(No "A" Date)	
Roscoe J. Vaughn, Jr.	4th Cook	9- 1-47
Jarome O. Watson	3rd Cook	7- 7-48
Henry D. Wiley	(No Longer Employed)	
J. M. Williams	3rd Cook	6- 2-46
Henry L. Williamson	Chef	6- 2-46
Chas. P. Westbrooke	Chef	6- 2-46
Charles Winston	Chef	6- 2-46
Elie Woods, Jr.	3rd Cook	9- 1-47
Pall E. Woods	(Not Identified)	

Copy received.

[Endorsed]: Filed October 24, 1949.

[Title of District Court and Cause.]

## AFFIDAVIT OF H. A. HANSEN

State of Nebraska,  
County of Douglas—ss.

H. A. Hansen, of Omaha, Douglas County, Nebraska, being first duly sworn, deposes and says that he is the Manager of the Dining Car and Hotel Department of the Union Pacific Railroad Company, and that he makes this affidavit concerning

certain statements contained in the 5-page affidavit of Thomas E. Hayes, verified September 22, 1949, and filed in the above-entitled action.

Affiant states:

(1) That all officers and employes of the Dining Car and Hotel Department of the defendant railroad company are under affiant's jurisdiction and that if any such action of the nature set forth in the said affidavit of Thomas E. Hayes had taken place as alleged that such action would have been reported to him or come to his attention or knowledge in some manner.

(2) That the statement in the above-named affidavit filed by Mr. Thomas E. Hayes, commencing on line 2, page 3, and continuing through line 19 of that page, to the effect that railroad officials threatened the signers of any retainer agreements with being fired from their jobs "after September 1"; that refusal to so sign would place their jobs in jeopardy, and that bodily harm would result if they did not withdraw from the above-named suit, are likewise entirely false and without any basis or foundation whatsoever.

(3) That this affiant has not discussed the above-entitled action with any of those persons listed on Exhibit A attached to the complaint, or in paragraph I of the amendment to the complaint dated August 12, 1949, or in the amendment to the complaint dated September 14, 1949, and that he has



not, directly or indirectly, at any time, threatened, intimidated or made any statements whatsoever to any of the said persons to the effect that, unless they signed an affidavit withdrawing themselves from the above-entitled lawsuit, they would lose their job, be run off the railroad, or suffer physical injury; nor has affiant made any promises of reward of any kind to any of said persons in an effort to induce any of them to sign said affidavit.

(4) That, to the best of this affiant's knowledge, no official of the Union Pacific Railroad Company has at any time, either directly or indirectly, threatened, intimidated or made any statements whatsoever to any of the said persons to the effect that, unless they signed an affidavit withdrawing from the above-entitled action, they would lose their job, be run off the railroad or suffer physical injury, or made any promise of reward of any kind to any of the said persons in an effort to induce any of them to withdraw from the above lawsuit.

/s/ H. A. HANSEN.

Subscribed and sworn to before me this 21st day of October, 1949.

[Seal] /s/ LOUIS SCHOLNICK,

Notary Public in and for Said  
County and State.

Receipt of copy acknowledged.

[Endorsed]: Filed Oct. 24, 1949.

[Title of District Court and Cause.]

AFFIDAVIT OF THOMAS E. HAYES ADDRESSED TO THE NINE-PAGE AFFIDAVIT OF H. A. HANSEN, VERIFIED OCTOBER 21, 1949.

State of Nebraska,  
County of Douglas,  
City of Omaha—ss.

I, Thomas E. Hayes, of 2928 N. 24th Street, City of Omaha, State of Nebraska, being first duly sworn, depose and say:

That I am one of the plaintiffs in the above-entitled action. Further I state:

(1)) That I have read the nine-page affidavit of H. A. Hansen, verified October 21, 1949, and filed in this cause. And that the said affidavit contains many misstatements of fact which are hereinafter discussed.

(2) In my affidavit verified October 15, 1949, I made a statement that when initially hired by defendant railroad, Negro cooks are given seniority dates in Group B, whereas white cooks are from the time of hiring given seniority dates in Group A regardless of any other considerations. Mr. Hansen challenges this statement and sets up a tabulation on page 2 and 3 of his affidavit setting forth various categories of Negro cooks including Chefs and alleges that in each of these categories Negro cooks were initially hired and given an initial sen-

iority date in the various groups and classifications as set forth in the tabulation. For example, the affidavit states that ten Negroes were initially hired in Group AA, Class 5; two Negroes in Group A, Class 2; thirteen Negroes in Group A, Class 3; thirty-nine Negroes in Group A, Class 4; and 254 Negroes in Group A, Class 5. The affidavit deals with initial hirings of Negroes within the four-year period next preceding the filing of the complaint herein.

The fact is that with respect to the ten Negroes alleged to have been hired in Group AA, Class 5, not one Negro had been hired in Group AA in the said four-year period. In this connection, I wish to observe that the City of St. Louis started in regular service last spring and that the dining car service on said train is manned entirely by all Negro cooks not one of whom was hired with initial seniority in Group A, but only in Group B, notwithstanding the fact that the City of St. Louis is a Group A train.

With respect to the two Negroes hired in Group A, Class 2 Chefs, no Negro within the said period of four years has been initially hired as a Chef, but on the contrary Chefs have been taken from Class 2 (Second Cooks) and promoted by bid, if promoted at all.

With respect to the thirteen Negroes alleged to have been hired initially in Group A, Class 3 (Second Cooks, only one has been so hired within the said four-year period. This one is Tom Savage who was hired in 1944.

With respect to the thirty-nine Negroes alleged to have been initially hired in Group A, Class 4, none whatever were hired in Group A during the said four-year period.

With respect to the 254 Negroes alleged to have been initially hired in Group A, Class 5, none were so hired during the said four-year period. In this Group Robert C. Turner, one of the plaintiffs herein, worked several years on Class A trains, during all of which period he obtained no seniority date in Class A, but on the contrary got his seniority date September 19, 1948, which is a demonstration that he was not hired initially with seniority date in Group A. Another plaintiff herein, Konwood Thomas, although having worked for a period of years prior to December 9, 1947, did not get his seniority date in Group A until December 9, 1947, thus establishing conclusively that he was not hired with a seniority date in Group A. In this Group, Eugene McCarthy, although employed several years, has not yet achieved a seniority date in Group A, thus again establishing conclusively that he was not initially hired with a seniority date in Group A.

On page 3 of Mr. Hansen's affidavit there is a classification of eighty-six of those who are designated as plaintiffs in this action, showing several of them originally hired in Group A and in various Classes in that Group. This is an absolutely false statement as there is no person named as plaintiff in these proceedings who attained a seniority date

in Group A upon initial hiring, but on the contrary every one of them were first hired and given seniority dates in Group B.

In the exhibits attached to the affidavit of Auguston, verified August 14, 1949, and subsequently corrected in so-called minor details, there is not one individual who was at the time of initial hiring given a seniority date in Group A, but on the contrary every one of them were initially hired with seniority dates in Group B and the fact that it was not until years afterwards that they were first accorded seniority dates in Group A demonstrates conclusively that they were not originally hired in that Group, but only in Group B.

With regard to the person referred to on page 4 of Mr. Hansen's affidavit, as Leodis Kelton, Mr. Hansen states that I am not referring to Leodis Kelton in view of a letter written by Kelton under date of July 24, 1949, a copy of which is attached to the Hansen affidavit. In this connection I wish to say that the statements contained in the said copy are as follows:

"I have not signed my name to no paper that or no other. I do not know Mr. Hayes. I don't know why my name is signed there. I have never met Mr. Hayes or even seen him. I have not signed my name to nothing of that kind."

The fact is that notwithstanding Mr. Hansen's impression to the contrary, I was referring to Leodis Kelton whom I know well. His letter however is an illustration of the lengths to which a



terrorized man will go when sufficiently intimidated by his employer. The reason why his name appears in the suit, is because Mr. Robert M. Ewing personally asked him to sign a retainer directed to Archibald Bromsen. Last night while talking with Mr. Sawyer and Mr. Ewing at Mr. Sawyer's home in San Francisco, I was shown the original retainer signed by Leodis Kelton. On the line above "Signature" on the form, he wrote Leadis Kelton; on the line above "Name—Printed," he wrote Leadis Kettor, and because he signed this retainer is the reason why his name appears in the suit.

On page 4 of Mr. Hansen's affidavit, referring to Leonard D. Rivers, he says this is the first time he has been referred to in this action. Leonard D. Rivers' name appears in Exhibit A, attached to the original complaint, only his last name is spelled Riuers, because his signature shows a printed "v" in the word Rivers, which was misinterpreted by a stenographer as a "u," which is the reason Rivers' name appears as Riuers in the said Exhibit "A,"

On page 7 of Mr. Hansen's affidavit it is stated that I was discharged because I falsified my age in making application for original employment. This is false and the facts are as follows. When I was employed by defendant Union Pacific Railroad in 1936 I had previously been in the employ of the Dining Car Department of the Pennsylvania Railroad and for years had served as second cook on the diners attached to the most luxurious excess

fare trains in the United States at that time, namely, the Broadway Limited and the Congressional Limited and other excess fare trains of similar type operated by the Pennsylvania Railroad. All the personnel information which defendant Union Pacific had at the time I was employed in 1936 was obtained from my personnel records which the Union Pacific secured from the Pennsylvania Railroad and I made no representation as to my age. The real reason I was discharged was because a Mr. N. M. Leshner, then and now an official of defendant Union Pacific Railroad, was unable despite his best efforts to collect \$35.00 from me for the benefit of Day Employment Agency of Chicago, which the employment agency claimed I owed them. The circumstances were that the employment agency agreed to get me a hotel job and not a railroad job which I could have gotten myself at any time. They failed to get me a hotel job and had nothing to do with my employment by defendant Union Pacific Railroad in 1936. Nevertheless, the Day Employment Agency besought the aid of the said Leshner to force me to pay \$35.00 to the said Day Employment Agency and as a result of my refusal was discharged by Leshner.

It is not true that when I was rehired in 1942 by Defendant Union Pacific Railroad I was given a seniority date in Group B, Second Cook, because that was the only work opportunity available at the time. On the contrary I was put into Group B, because I was a Negro and at, or about, the same

time I was hired, other white men with little or no experience or qualifications were at the time of initial hiring automatically given a seniority date in Group A.

In short, notwithstanding the misleading if not consciously false statements contained in Mr. Hansen's affidavit, the fact is that during the four-year period prior to the filing of the complaint herein, discrimination against Negroes was rife in the Dining Car Department of defendant Union Pacific Railroad and the only amelioration in this discrimination was belatedly obtained through pressures brought to bear by me and a host of other Negroes associated with me, all of whom are parties to the present litigation.

As an illustration of this discrimination, take the case of my own bid for a position on the Overland, a Group A train, in 1946. I bid for the job under the provisions of the Collective Bargaining Agreement of June 1, 1942. I had had years of experience in the best dining car services operated by the best railroads in the United States, notably by those of the Pennsylvania Railroad. I therefore had capacity and fitness. Prior to the time I made my bid, Auguston assured me that not only would I get the bid and be assigned to the position, but also if my bid was accepted I would have to accept the position. After the time for bidding expired, a notice was published on the bulletin board that no qualified bidder had appeared. This was false because I appeared, submitted a bid and was quali-

fied. I asked Mr. Hansinck, an official of the Dining Car Department of defendant railroad to give me a letter telling me why I was not qualified, why my bid was not accepted and why I was not assigned to the position and he refused to give me any such letter. My case is only typical of the experience of many, if not all, of the Negro cooks involved in this litigation.

And so I repeat that the source of all Negro discrimination is that Negroes when initially hired and no matter how well qualified, are automatically and by reason of their race only, given seniority dates in Group B. Whereas whites when initially hired and notwithstanding complete lack of qualification, are automatically and because they are white, given seniority dates in Group A. From this initial discrimination spring all the abuses to which the Negro cooks in the employment of the defendant railroad have been subjected during not only the four years prior to the filing of the complaint herein, but for the last forty years.

/s/ THOMAS E. HAYES.

Subscribed to and sworn to before me this 31st day of October, 1949.

[Seal] /s/ RUTH M. DOSS,  
Notary Public in and for the County of Douglas,  
State of Nebraska.

My Commission Expires on the 27th day of November, 1954.

[Endorsed]: Filed November 7, 1949.

[Title of District Court and Cause.]

AFFIDAVIT OF J. HANSINK

State of Nebraska,  
County of Douglas—ss.

J. Hansink, of Omaha, Douglas County, Nebraska, being first duly sworn, deposes and says that he is the Superintendent (Eastern District) of the Dining Car and Hotel Department of the Union Pacific Railroad Company, one of the defendants in the above-entitled action, and that he has read the 7-page affidavit of Thomas E. Hayes, verified on October 31, 1949, filed in the above-entitled action, and makes this affidavit in regard to the statements made by Mr. Hayes commencing at page 6, line 16, through line 2 on page 7.

Affiant states:

Mr. Hayes asserts that at some time in 1946 he filed a bid for a bulletined position on the "Overland," a Group A train, and that, after the time for bidding had expired, a notice was published on the bulletin board stating that no qualified bidder had made application under this bid. I have examined the records covering each of those bids which Mr. Hayes submitted under the various bulletins in which Mr. Hayes was not the successful applicant. In not one of those instances was any bulletin published showing that no qualified bidder had made application. I do not recall having had any conversation with Mr. Hayes of the nature described in



his affidavit (page 6, line 20) and I do not believe there is any factual foundation for Mr. Hayes' assertions.

In every instance in which Mr. Hayes was an unsuccessful bidder for a bulletined position, the position was assigned to an employe who had made appropriate applicaiton therefor and was entitled to the position sought in preference to Mr. Hayes under the provisions of the collective bargaining agreement effective June 1, 1942, as uniformly applied to both colored and white employes.

/s/ J. HANSINK.

Subscribed and sworn to before me this 11th day of November, 1949.

[Seal]:     /s/ LOUIS SCHOLNICK,  
Notary Public in and for  
said County and State.

[Endorsed]   Filed November 15, 1949.

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[Title of District Court and Cause.]

AFFIDAVIT OF H. A. HANSEN ADDRESSED  
TO THE 7-PAGE AFFIDAVIT OF  
THOMAS E. HAYES, VERIFIED ON  
OCTOBER 31, 1949.

State of Nebraska,  
County of Douglas—ss.

H. A. Hansen, of Omaha, Douglas County, Nebraska, being first duly sworn, deposes and says that

he is the Manager of the Dining Car and Hotel Department of the Union Pacific Railroad Company, one of the defendants in the above-entitled action, and that he has read the 7-page affidavit of Thomas E. Hayes (hereinafter referred to as the "Hayes affidavit"), which was verified on October 31, 1949, filed in the above-entitled action, and makes this affidavit in regard to some of the false and misleading statements, allegations and assertions contained in the Hayes affidavit.

Affiant states:

(1) On page 2, commencing in line 16, of the Hayes affidavit, reference is made to my affidavit of October 15, 1949 (hereinafter referred to as "my affidavit"). Mr. Hayes asserts that my affidavit "deals with the initial hiring of Negroes within the four-year period next preceding the filing of the complaint herein." (Emphasis supplied.)

Mr. Hayes is completely mistaken. My affidavit did not deal with the initial hirings which occurred only within the said four-year period. The data presented at pages 2 and 3 of my affidavit dealt with the initial hirings whenever the same may have occurred and was not limited to those hirings which occurred only within the four-year period next preceding the filing of the complaint herein, nor was there anything in my affidavit so stating.

Specifically, I stated (commencing at line 18, page 2), that, during the said four-year period, there were 946 persons (363 of whom were white and 583

of whom were Negroes) who had or have had an employment relation with the defendant Union Pacific Railroad Company in the cook's craft. The data at pages 2 and 3 of my affidavit concerned the initial hirings of these 946 persons without regard to when they were hired. I did not refer only to those who were hired within the four-year period preceding the filing of the complaint. Many of the 946 persons who had such an employment relation with the defendant railroad during the said four-year period were in fact hired in years previous thereto.

Mr. Hayes made statements in his 15-page affidavit, verified on October 15, 1949, as to the alleged discriminatory hiring practices of the defendant Union Pacific Railroad Company and he asserted that "all Negro cooks at the time of original hiring" were discriminatorily segregated and assigned to Group B. (See page 10, line 17, 18 and 19, of Mr. Hayes' 15-page affidavit, verified October 15, 1949.) Since Mr. Hayes asserted that the defendant Union Pacific Railroad Company had always discriminated against all Negroes in their initial hiring, I did not limit my statement to hirings occurring only within the said four-year period and there was no indication in my affidavit to that effect.

(2) In the tabulation at the bottom of page 2 of my affidavit, I pointed out that ten of the Negroes who held an employment relation with the defendant Union Pacific Railroad Company during the said four-year period had been originally hired in Group AA and Class 5 (fourth cook). That statement is

correct. Mr. Hayes does not deny that this correctly reflected the fact but in his affidavit (page 2, lines 20 and 21) makes the misleading and false assertion that "not one Negro had been hired in Group AA in the said four-year period." I made no statements whatsoever in my affidavit concerning the number of Negroes who have been initially employed in Group AA during the said four-year period. However, the fact is that each one of these 10 Negroes was hired originally in Group AA and each one was hired during the four-year period preceding the filing of the complaint. The names and dates of initial hiring in Group AA of these ten persons are as follows:

Name	Date of Initial Hiring in Group AA
Otis Baston	9-17-47
Willie Earl	9-17-46
Thos. P. Kuykendall	6-19-48
Leon Mayfield	7- 4-46
W. A. Moland	10-30-47
Vernon J. Rose	7-25-47
Albert Savage	7-14-47
Sylvester Teague, Jr.	12- 2-47
Jimmie L. Vaughn	7- 1-48
George L. Wesley	7-21-47

(3) Mr. Hayes, at page 2, lines 21 through 26, "observes" and alleges that dining car service on the defendant's train the "City of St. Louis" is manned entirely by Negro cooks. This statement is correct. Mr. Hayes' statement on the same page (line 26) that the train "City of St. Louis" is a Group A train is not correct. The "City of St. Louis" is a Group AA train and consequently all cooks regularly assigned to this run have Group AA

seniority. Mr. Hayes' statement to the effect that not one of those Negro cooks employed on the "City of St. Louis" was hired with initial seniority in Group A is not correct. The fact is that of the cooks assigned to the "City of St. Louis" there are 28 Negroes who were hired initially in Group A. The names and dates of initial employment are as follows:

Name	Date of Initial Employment in Group A
George M. Gillespie	10- 9-42
Dewey Berry	11-25-44
Eddie Luke	9-27-45
Larnie C. Allen	10-31-45
Willie B. Daniels	1-15-46
Arthur C. Lawrence	4-15-46
Floyd Mayfield	8-18-42
Nathan Owens	10-18-42
Leonard D. C. Harrison	8-13-42
Alfred McCowan	3- 5-43
Herman Jones	1- 3-43
Waddell M. Harper	5- 1-43
Reeves J. Smith	6-12-44
James N. Thomas	10- 5-45
Cartrol Logan	8-26-45
DeWitt Robinson	2- 5-46
George Harris	7-17-46
Archie D. Parker	5-14-47
Frank Watkins	7-21-47
Halsie B. Owens	7-21-47
L. D. Cooper	12-21-47
George Walker	7- 1-48
Ulysses G. Garrison	7- 5-48
Eugene M. Roberts	7-10-48
Elisha J. Lewis	7-23-48
Halsie M. Owens	1- 5-49
Monroe Malone	1-10-49
Frank A. Burgess	2- 4-49



(4) In the tabulation at the bottom of page 2 of my affidavit I stated that of all those persons who had an employment relation with the defendant Union Pacific Railroad Company during the said four-year period there were two Negro cooks who were initially hired in Group A, Class 2 (chefs). Mr. Hayes, at page 2, in lines 27-30, refers to this item. The statement in my affidavit correctly reflected the facts. Mr. Hayes does not deny this, but makes the misleading and false assertion (lines 28-29) that:

“No Negro within the said period of four years has been initially hired as a chef but on the contrary, chefs have been taken from class 3 (second cooks) and promoted by bid, if promoted at all.”

I made no statements whatsoever in my affidavit concerning the number of Negroes who have been initially hired as chefs (class 2) during the four-year period preceding the filing of the complaint herein. The fact is there have been no persons, either colored or white, who have been initially hired in the past four years as chefs (Class 2) in any seniority group.

(5) In the tabulation at the bottom of page 2 of my affidavit I showed that 13 of the Negroes who held an employment relation with the defendant Union Pacific Railroad Company during the said four-year period had been hired initially in Group A, Class 3 (second cooks). Mr. Hayes does not deny that this statement correctly reflected the facts, but in his affidavit (page 2, line 32, and continuing

through line 2, page 3) makes the misleading and false assertion that only one Negro "has been so hired within the said four-year period." I did not make any statements in my affidavit concerning the number of Negroes who have been initially employed in Group A, Class 3 (second cooks) during the four-year period preceding the filing of the complaint herein. Again, I wish to point out that the figures which I listed in my affidavit did not state that all of the Negro employes referred to had been hired initially within the four-year period. Many of them were hired before the said four-year period. I merely pointed out that of the number who had an employment relation during the four years preceding the filing of the complaint, 13 had been initially hired in Group A, Class 3. However, the fact is that eight of these 13 Negroes I referred to were hired initially in Group A, Class 3 (second cooks) during the four-year period preceding the filing of the complaint. The names and dates of initial employment in Group A, Class 3, of the eight Negroes referred to are as follows:

Name	Date of Initial Employment in Group A, Class 3
George R. Adams	7- 6-45
Ira L. Gallaway	9-22-45
Thomas Jackson	11-14-45
Isreal Jones	9-27-45
Willie L. Jones	10-28-45
John H. McElwee	8-28-45
James Roberts	1- 7-46
Steve Stevenson	1- 6-46

(6) In the tabulation at the bottom of page 2 of my affidavit, I stated that 39 of the Negroes who had an employment relation with the defendant Union Pacific Railroad Company during the said four-year period were hired initially in Group A, Class 4 (third cooks). That statement was correct. Mr. Hayes does not deny this; however, in his affidavit (page 3, lines 3-5), he makes the misleading and false assertion that:

“None whatever were hired in Group A during the said four-year period.”

I made no statements in my affidavit concerning the number of Negroes who have been initially employed in Group A, Class 4, during the said four-year period. However, the fact is that, out of the 39 Negroes referred to, there were 30 Negroes who were hired initially in Group A, Class 4, during the said four-year period. The names and dates of initial employment are as follows:

Name	Date of Initial Employment in Group A, Class 4 (third cooks)
Larnie C. Allen	10-31-45
Clarence L. Benton	10- 2-45
Vincent O. Carter	5-22-46
James R. Crawford	5-10-46
Willie B. Daniels	1-15-46
William Edmond, Jr.	11-10-45
Albert Ellington	9-17-45
Hilliard W. Goldsmith	11- 1-45
Willie Henry	3- 7-46
Theodore S. Jordan	8-29-45
Leodis Kelton	4-18-46
Samuel H. King	10- 5-45
Arthur C. Lawrence	4-15-46

Name	Date of Initial Employment in Group A, Class 4 (third cooks)
Eddie Luke	9-27-45
Nolden Mason	8-28-45
Joseph S. Maxwell	8- 3-45
Coral J. Morris	6- 9-48
Eddie Morris	4-10-46
Edgar Nelson	12-18-45
Selman E. Nichols	12-11-45
Robert Nolen, Jr.	8-20-45
Eugene Patt	8- 1-45
Nick Patton	7-27-45
Henry C. Record, Jr.	8- 1-45
Freddie L. Reed	4-28-46
Clarence L. Springer	10-30-45
Willie Steward	11-21-45
Sam S. Sutera	4- 9-46
L. B. Williams	9- 1-45
Ossie L. Young	7-27-46

(7) In the tabulation at the top of page 3 of my affidavit, I stated that 254 of the Negroes who held an employment relation with the defendant Union Pacific Railroad Company during the said four-year period had been initially hired in Group A, Class 5. I have rechecked the personnel records and the applicable seniority rosters and the figure should be 251 instead of 254. Again, Mr. Hayes in his affidavit (page 3, lines 6-8) makes the misleading and false assertion that "none were so hired during the said four-year period."

I did not make any statements in my affidavit concerning the number of Negroes who have been initially hired or employed in Group A, Class 5, during the four-year period preceding the filing of the complaint herein. However, the fact is that, dur-

ing the said four-year period, 199 Negroes were originally hired or employed in Group A, Class 5. The names and date of initial employment in Group A, Class 5, for each of these 199 colored persons is shown on Exhibit B, attached hereto and made a part hereof.

Continuing, Mr. Hayes asserts (page 3, lines 8-13) that Mr. Robert C. Turner is "in this group" and that Turner acquired a seniority date (Group A) on September 19, 1948, but, Hayes states, this was not Turner's initial hiring. Nowhere in my affidavit did I state that Mr. Turner was one of those Negroes who had been initially hired in Group A. Mr. Turner's name is shown on Exhibit D, which was attached to my affidavit, as having Class A seniority with a seniority date of September 19, 1948, but I did not state that that was the initial date of his hiring, nor did I state that he was one of the 254 Negroes who were initially hired in Group A, Class 5.

Similarly, Mr. Hayes asserts (page 3, lines 13-17) that Mr. Kenwood Thomas "worked for a period of years prior to December 9, 1947, did not get his seniority date in Group A until December 9, 1947, thus establishing conclusively that he was not hired with a seniority date in Group A." Nowhere in my affidavit did I state that Mr. Thomas was one of those Negroes who had been initially hired in Group A. Mr. Thomas' name is shown on Exhibit D attached to my affidavit as having Group A seniority date of December 9, 1947, but I did not state he was initially hired in that seniority group.



In both of the above instances, Mr. Hayes is confusing and misconstruing Exhibit D attached to my affidavit, which did not relate in any way to the initial hiring of the employees there listed, with the figures presented at pages 2 and 3 of my affidavit, which detailed the facts concerning the initial hiring of all those cooks in the Dining Car Department who had an employment relation during the four years next preceding the filing of the complaint herein.

The data presented in Exhibit D, attached to my affidavit, listed those so-called plaintiffs in this action who hold seniority in Group AA and A and was directed to the allegations made by Mr. Hayes that the defendant Union Pacific Railroad Company had denied plaintiffs seniority in the "higher classes and groups" as alleged in paragraph XII of the complaint filed herein. The data shown in Exhibit D demonstrated the falsity of such allegation.

(8) Mr. Hayes, on page 3, lines 17-20, of his affidavit, refers to Mr. Eugene McCarthy and states that:

"\* \* \* although employed several years (Mr. McCarthy) has not yet achieved a seniority date in Group A, thus again establishing conclusively that he was not initially hired with a seniority date in Group A." (Parenthetical expression added by affiant.)

I wish to state that nowhere in my affidavit did I state that Mr. Eugene McCarthy was originally

hired in Group A. Mr. McCarthy is shown on Exhibit D attached to my affidavit as having fourth cook seniority in Group A, with a seniority date of December 9, 1947. This is a fact and Mr. McCarthy is shown on the official seniority roster for Seniority District 1 (Omaha District) as having acquired seniority in Group A as a fourth cook (Class 3) on December 9, 1947. There is attached hereto and made a part hereof a photostatic copy of sheet number 9 of the seniority roster for the Omaha district dated January 1, 1948, which shows Mr. McCarthy as having the Group A date above indicated. (I have underlined Mr. McCarthy's name on Exhibit A.)

(9) At page 3, lines 21-28, of Mr. Hayes' affidavit the following statement is made:

"On page 3 of Mr. Hansen's affidavit there is a classification of 86 of those who were designated as plaintiffs in this action, showing several of them originally hired in Group A and in various classes in that group. This is an absolutely false statement as there is no person named as plaintiff in these proceedings who attained a seniority date in Group A upon initial hiring, but on the contrary everyone of them were first hired and given seniority dates in Group B."

Mr. Hayes brands as "absolutely false" my statement showing that 13 of the so-called plaintiffs herein were initially employed by the defendant Union Pacific Railroad Company as follows:

Number of So-Called Plaintiffs	Initially Employed In :	
	Group	Class
1	A	2 (Chefs)
2	A	3 (Second Cooks)
4	A	4 (Third Cooks)
6	A	5 (Fourth Cooks)

I have again rechecked the personnel records of the employes involved, as well as the applicable seniority rosters, and the figures shown above are correct in every detail, with one exception: The tabulation above shows that there were six of the so-called plaintiffs initially employed in Group A, Class 5; this figure is in error and should be three employes instead of six. The names and dates of initial employment in Group A of the so-called plaintiffs included in the above tabulation are as follows:

	Initial Employment in Group "A"
Edward M. Jones	8- 5-16
2nd Cooks	
Dewey Berry	11-25-44
Thomas Savage	9-23-44
3rd Cooks	
Albert Ellington	9-17-45
Leodis Kelton	4-18-46
Edgar Nelson	12-18-45
John J. Shanks	5-30-44
4th Cooks	
Clarence O. Buckner	6-16-48
Robert J. Ivory	5-21-48
Eli Woods, Jr.	8- 7-46

(10) Beginning at line 29, page 3, and continuing through line 5, page 4, Mr. Hayes in his affidavit

refers to Exhibit A attached to Mr. Steven R. Auguston's affidavit (verified September 14, 1949) and to the corrected listing which I attached to my affidavit as Exhibit D. Mr. Hayes states, apparently with regard to the individuals listed on these two exhibits, that (line 31, page 3):

"There is not one individual who was at the time of initial hiring given a seniority date in Group A but on the contrary every one of them were initially hired with seniority dates in Group B and the fact that it was not until years afterwards that they were first accorded seniority dates in Group A demonstrates conclusively that they were not originally hired in that group but only in Group B."

In Item 9 of this affidavit I have shown the names of the so-called plaintiffs in this action who, upon original employment with the defendant Union Pacific Railroad Company, were initially employed in and accorded a seniority date in Group A and the statement there made is correct.

(11) At page 5, beginning in line 5, Mr. Hayes discusses and makes numerous statements concerning the reason for his discharge from the service of the defendant Union Pacific Railroad Company in 1936. There is no basis or foundation in fact for Mr. Hayes' assertion in this regard and he was, as I stated in my affidavit, discharged from the defendant's employ in 1936 because he had falsified his age in his employment application. Mr. Hayes was re-hired in 1942; however, he had no previous seniority with the defendant Union Pacific Railroad

Company because of his previous discharge and he was hired as a new employe.

Mr. Hayes was employed in Seniority Group B as a second cook because at that time employment in that Group and Class was the only work opportunity available and there is no foundation in fact for Mr. Hayes' statement that he was put in Group B, Class 2, solely because he was a Negro. The fact is that on October 25, 1942, at the time Mr. Hayes was reemployed, the following white cooks were employed on Group B, 2nd cook positions, in the Omaha seniority district (which was the district Mr. Hayes was reemployed in):

Lewis W. Barta.

Lester From.

Richard D. McCoy.

Ira Peck.

George H. Schultz.

(12) Throughout Mr. Hayes' affidavit many assertions were made concerning the initial hirings of Negro cooks during the four-year period preceding the filing of the complaint herein, and again on page 6, lines 7-15, Mr. Hayes states:

"In short, notwithstanding the misleading if not consciously false statements contained in Mr. Hansen's affidavit, the fact is that during the four-year period prior to the filing of the complaint herein, discrimination against Negroes was rife in the Dining Car Department of defendant Union Pacific Railroad and the only amelioration in this discrimination was belatedly obtained through pressures



brought to bear by me and a host of other Negroes associated with me, all of whom are parties to the present litigation.”

In view of the continued repetition of such statements, it is apparently Mr. Hayes' present theory that the alleged discriminatory actions of defendant Union Pacific Railroad Company in initially hiring Negro cooks occurred within the four-year period preceding the filing of the complaint. This position is untenable and without any support in fact. I have heretofore shown that during the four-year period next preceding the filing of the complaint:

10 Negro cooks were initially hired in Group AA (see item (2) hereof);

13 Negro cooks were initially hired in Group A, Class 3 (see item (5) hereof);

30 Negro cooks were initially hired in Group A, Class 4 (see item (6) hereof); and

199 Negro cooks were initially hired in Group A, Class 5 (see item (7) hereof and Exhibit B).

Mr. Hayes' assertion that the:

“\* \* \* only amelioration in this discrimination was belatedly obtained through pressures brought to bear by me”

is entirely false and without any factual foundation whatsoever. There has been no discrimination as Mr. Hayes alleges and the fact that many Negroes were initially employed more than four years ago in Group A, as has been shown heretofore, demon-

strates the complete falsity of Mr. Hayes' reckless statement.

/s/ H. A. HANSEN.

Subscribed and sworn to before me this 12th day of November, 1949.

[Seal] /s/ GEO. W. PETERSEN,

Notary Public in and for said  
County and State.

# EXHIBIT A

Form 2546-S

Union Pacific Railroad Co.  
Seniority Roster

Dining Car Employees Union, Local No. 372  
Omaha District

Class: Fourth Cooks & Coach Buffet  
Cooks Helpers (Contd)

Seniority District No. 1

Date of Roster January 1, 1948

		Seniority Date			
	Group AA	Group A	Group B	Group C	
Yeeha, Frank		4-27-38	4-27-38	4-27-38	
Washington, Vernon			4-27-38	4-27-38	
Benak, John J.		5-17-38	5-17-38	5-17-38	
McKain, Wilbur C.		5-20-38	5-20-38	5-20-38	
Nedich, Joe		6-10-38	6-10-38	6-10-38	
McCoy, Richard D.		7-25-38	7-25-38	7-25-38	
Munhall, Kenneth E.	5- 1-41	8-26-38	8-26-38	8-26-38	
McCarrell, Henry		5- 5-45	9- 5-38	9- 5-38	
Kiger, Howard		6-26-39	6-26-39	6-26-39	
Silvus, Ralph L.		8- 1-39	8- 1-39	8- 1-39	
Ruvolo, Lewis J.		8- 3-40	8- 3-40	8- 3-40	
Bartos, James F.	2-14-47	8- 4-40	8- 4-40	8- 4-40	
Swendrowski, Edw. V.		5-16-41	5-16-41	5-16-41	
Cherek, Edward F.		5-24-41	5-24-41	5-24-41	
Bonge, Richard		2-16-42	2-16-42	2-16-42	

## Seniority District No. 1

Date of Roster January 1, 1948

	Seniority Date			
	Group AA	Group A	Group B	Group C
Eskesen, Fred B.		6-13-42	6-13-42	6-13-42
Loring, Erwin S.		6-21-42	6-21-42	6-21-42
Nitz, Dale F.		7- 6-42	7- 6-42	7- 6-42
Maroney, Kenneth D.		1-30-45	9-23-42	9-23-42
Hayes, Thomas E.			10-25-42	10-25-42
Watson, Jerome O.			12- 8-42	12- 8-42
Allen, Alfred T.		8- 5-47	2-16-43	2-16-43
Nelson, Eddie		10- 8-47	5-22-43	5-22-43
Carter, John H.			5-25-43	5-25-43
Keller, Rudolph		6- 9-43	6- 9-43	6- 9-43
Johns, Marion J.		9- 1-47	6-11-43	6-11-43
Brown, Sidney		10- 7-43	10- 7-43	10- 7-43
Rivers, Leonard			10-14-43	10-14-43
Morrison, Richard O.		9- 1-47	11- 2-43	11- 2-43
Johnson, Otis			12-12-43	12-12-43
Miller, John L.		9- 1-47	1-31-44	1-31-44
Dedmon, Ira		5- 1-45	2-12-44	2-12-44
Hayes, C. L.			8-10-44	8-10-44
McCarthy, Eugene		12- 9-47	8-16-44	8-16-44
Savage, Thomas		9-23-44	9-23-44	9-23-44
Ballard, Lewis		9- 1-47	10- 4-44	10- 4-44
Fenton, Claude		10-12-44	10-12-44	10-12-44
King, Edmond, Jr.		5-23-46	10-13-44	10-13-44
Christmas, Robert J.		5-23-46	12- 5-44	12- 5-44
Koenig, Michael J.		12-17-46	12-27-44	12-27-44
Beck, Frank J.		8- 6-46	1- 4-45	1- 4-45
Spence, John M.		3- 7-45	3- 1-45	3- 1-45
Vaughn, Roscoe J., Jr.		9- 1-47	3-22-45	3-22-45
Bradford, Henry H.			5- 9-45	5- 9-45
Delaney, Harrison			6- 7-45	6- 7-45
Doolittle, Phillip, Jr.		9- 1-47	7- 3-45	7- 3-45
Gilreath, Junior N.		9- 1-47	7-14-45	7-14-45
Rynarzewski, William A.		5-23-47	8- 1-45	8- 1-45

## EXHIBIT B

List of colored cooks initially hired in Group A, Class 5 (Fourth Cooks) during the four-year period preceding the filing of the complaint.

Name	Date
Willie Adams .....	7-27-47
Deray Aldridge.....	8- 6-47
Eugene M. Aldridge.....	10-25-45
Charles Allen.....	7-21-45
John F. Anderson.....	2- 2-46
Elton Avery.....	2- 1-46
Clarence L. Baker.....	8-13-47
Godfrey Ballard.....	10-24-45
Booker T. Balls.....	12- 4-45
Calvin Bannon, Jr.....	10-14-45
Jerome W. Bartlow.....	8- 1-46
Willie Beaty .....	12- 4-45
Andrew Billups, Sr.....	9-24-45
William Bishop .....	12-23-45
Obed Blackmore.....	10- 9-46
Benjamin A. Blunt.....	10-11-45
Delaware Booker .....	6-10-47
Alfonso Brown .....	4- 5-48
Harrison Brown.....	5-12-49
Henry Brown, Jr.....	7-23-45
James Brown.....	12- 7-45
Sam H. Brown.....	6-26-47
David Bryant .....	8-27-47
Volleny Bryan .....	8-31-46
Clarence O. Buckner.....	6-16-48
Frank A. Burgess.....	2- 4-49

Name	Date
Nedham L. Burnell.....	12-14-45
Thomas O. Carr.....	11-18-45
Agneroldo F. Cathrill.....	8-13-47
William H. Chandler.....	7- 2-48
Henry D. Clopton.....	5-15-47
Willie Cole.....	1-22-46
Arthur Collier.....	5-17-47
Floyd Collins.....	9-22-45
Albert Combs, Jr.....	7-26-48
James P. Connor.....	5-23-48
Osbie Cook.....	7-24-47
James D. Cooper.....	12-25-45
L. D. Cooper.....	12-21-47
Thomas Cummings.....	4-19-46
Garland Davis.....	2-14-46
John H. Davis.....	8-27-47
Tyree Day.....	7- 1-47
Elbert J. Dennis.....	10-23-45
Tracy Dennis.....	3- 7-46
J. B. R. Dickens.....	11- 8-45
Bruce E. Douglas.....	8-28-45
Sherman R. Douglas.....	7- 9-46
Melvin Douglass.....	8-18-45
Charley Dyson, Jr.....	12-14-45
William H. Easter.....	6-19-47
Phennell T. Eaton.....	6-10-47
James Edwards.....	2 -5-47
Paul Edwards.....	8-13-46
Frank A. English.....	1-12-47
William L. Ferguson.....	9- 9-45



Name	Date
Edward J. Freeman.....	11-30-45
Harmon L. Fullove.....	8-18-47
Ulyses G. Garrison.....	7- 5-48
David E. Gilliard.....	8- 1-48
Booker T. Gilmore.....	9-13-47
Leroy L. Gordon.....	10-14-45
William Graham.....	10-11-45
Albert Gray.....	12-18-47
Carnell Green.....	5-10-48
Robert Green, Jr.....	5-16-47
Elmer L. Griffie.....	10-25-45
James N. Grimes.....	4-19-46
Joseph A. Hall.....	7- 3-47
J. B. Hanson.....	8-22-45
George Harris.....	7-17-46
Johnnie L. Harris.....	10- 5-45
Henry H. Haynes.....	8-26-45
Elijah Henderson.....	8-10-45
John L. Hilliard.....	5-17-47
Daniel H. Holcey.....	8- 5-47
Joe Holmes, Jr.....	8-27-46
Benjamin F. Holt.....	9-21-46
John Huston.....	6-29-46
Roscoe Howard.....	5-22-46
Jesse J. Hunter.....	7-20-46
Robert J. Ivory.....	5-21-48
Orville V. Jackson.....	9-21-45
Walter D. Jackson.....	9-18-46
William E. Jackson.....	2- 1-47
Booker T. Johnson.....	8-14-47

Name	Date
Clyde W. Johnson.....	4-13-46
Herbert S. Johnson.....	12-18-45
Jack Johnson.....	8- 5-46
LeRoy E. Johnson.....	10- 6-48
Louis Johnson.....	10- 8-45
Refus Joe.....	7-27-47
Allen Jones .....	2- 5-46
Charlie Jones .....	2- 3-46
Clem F. Jones.....	7-22-45
Jack L. Jones.....	7- 6-45
James Jones .....	8-17-45
Royal A. Jones.....	5-18-47
William M. Jones.....	12-13-45
Tyree Kellum .....	2-15-46
James E. Lamb.....	2-27-46
Emmerson Lee .....	3- 6-47
Thomas Lee.....	5-17-47
Elisha J. Lewis.....	7-23-48
Robert L. Lewis.....	1- 1-46
William T. Lewis.....	6-16-47
Charles Liles.....	4- 2-46
Thomas E. Lipscomb.....	8-25-46
Guss Lockridge.....	7-23-45
Gartroll Logan .....	8-26-45
John Long .....	3-30-46
Monroe Malone.....	1-10-49
Jeff D. Marshall.....	8- 2-45
Edwin J. Martin.....	8-22-48
Thomas L. Matthews.....	1-11-48

Name	Date
William R. McCauley.....	9- 8-45
Robert J. McCray.....	8-25-45
Preston J. McDowell.....	9-11-48
Edward McElroy .....	3-12-48
Will McKinney.....	11-13-45
Edward McKnight.....	9-25-45
Roger Q. Mills.....	4- 2-48
Carl C. Minor.....	9-15-45
Roscoe C. Mitchell.....	8-15-45
Quint L. Moore.....	10- 3-47
R. E. Moore.....	7-31-48
Robert L. Moore, Jr.....	10-29-45
Hilliard Moss.....	10-30-45
Isaiah Von Napper.....	12-21-45
Lentor P. Nash.....	9-16-45
Bonnie D. Nelson.....	1-26-46
Gilbert Nelson, Jr.....	7-24-45
Halsie B. Owens.....	7-21-47
Halsie M. Owens.....	1- 5-49
Hobart C. Owens.....	11- 2-47
Walter E. Palmer.....	9- 5-47
Archie D. Parker.....	5-14-47
Royal J. Paul.....	8-22-45
Thomas Perry .....	8-14-45
William H. Phillips.....	6-29-47
LeRoy Porter.....	9-11-45
Milton Porter.....	11-19-45
Theodore Porter.....	10-19-46
Elliot J. Prellow.....	9-19-46
Gauvene Prentis.....	10-24-45

Name	Date
Sylvester Randell.....	7- 2-48
Joseph R. Rankin.....	7-26-46
Albert Reed.....	11- 4-45
Willis E. Reed.....	6-14-47
Eddie B. Richey.....	8-26-45
James J. Roberson.....	7-11-48
Ambrous L. Roberts.....	6-27-47
Eugene M. Roberts.....	7-10-48
Dewitt Robinson.....	2- 5-46
Earnest A. Robinson.....	8- 7-45
Edward M. Rose.....	5-29-48
Cecil M. Samples.....	7- 5-47
Henry Scott.....	7-25-45
John W. Scott.....	10- 2-45
William J. Scott.....	4- 4-46
William O. Scruggs.....	5-14-47
Marvin Seward.....	8-15-47
Armsted Shaw.....	2- 6-47
Eliga Shelton.....	6-30-48
Ermon Shelton.....	7- 7-46
Andrew Smith.....	9-16-45
Cecil Smith.....	8-29-46
James Smith.....	9-18-45
James Smith, Jr.....	7- 2-47
Joe Smith.....	8-23-45
Nathan A. Smith.....	7-30-47
Richard Smith.....	1-12-46
Wiliam Smith.....	2-26-46
Clifford Stegger.....	11-27-45
David Stevens.....	9- 1-45

Name	Date
J. B. Taylor.....	7- 7-47
John O. Taylor.....	9-19-46
Clyde M. Thomas.....	9-14-45
James E. Thomas.....	5-18-45
James M. Thomas.....	10- 5-45
James W. A. Vaughn.....	6-23-47
Neal D. Vaughn.....	5-15-47
George Walker.....	7- 1-48
William R. Walker.....	10- 1-46
George Washington.....	12-29-45
Linnie B. Washington.....	10-30-47
Rand Washington.....	12- 5-45
James Waters.....	9-27-46
Frank Watkins.....	7-21-47
Greene Webster.....	11-17-45
Clarence O. Whitner.....	6-19-48
Leroy Wilcher.....	3-12-46
Emmett L. Williams.....	7-28-46
Horace C. Williams, Jr.....	9-19-47
James Williams (1).....	9-10-45
James Williams (2).....	7-24-45
Woodrow E. Wilson.....	8-26-46
Walter Winston.....	10-27-48
Eli Woods, Jr.....	8- 7-46

[Endorsed]: Filed November 15, 1949.



[Title of District Court and Cause.]

## OPINION

Action for injunction and for other relief for discrimination against Negro employees. Action dismissed in accordance with opinion.

Harold M. Sawyer, Gladstein, Andersen, Resner & Sawyer, all of San Francisco, California, attorneys for petitioners.

T. W. Bockes, W. R. Rouse, Elmer Collins, James A. Wilcox, all of Omaha, Nebraska, and E. E. Bennett, Edward C. Renwick, Malcolm Davis, and W. J. Schall, all of Los Angeles, California, attorneys for respondent Union Pacific Railroad Company.

Marion B. Plant, Brobeck, Phleger & Harrison, all of San Francisco, California, attorneys for respondent Dining Car Employees Union Local 372.

## Memorandum Opinion

Roche, District Judge: This is an action to prevent, and secure damages for, unlawful discrimination under the Railway Labor Act, 45 U.S.C.A. §151 et seq. Petitioner Hayes is a Negro member of the respondent Dining Car Employees Union Local 372 (hereinafter referred to as "Union") and is employed by respondent Union Pacific Railroad Company (hereinafter referred to as "Railroad") in its dining car and commissary service. He brings this action on behalf of himself and all other Negro employees similarly situated.

Respondents have filed certain motions to strike and have moved to dismiss the action on the grounds of (1) failure to state a cause of action upon which relief may be granted and (2) lack of jurisdiction of the Court over the subject matter. In resisting these motions the petitioners rely entirely on the decisions of the Supreme Court in *Steele v. L. & N. R. Co.*, 323 U.S. 192, and *Tunstall v. Brotherhood*, 323 U.S. 210. Indeed, petitioners go so far as to assert that unless they bring themselves within the principle of the *Steele* and *Tunstall* cases, *supra*, there is no authority on which jurisdiction of this Court can rest. The fundamental question of jurisdiction thus depends on whether the record before this Court discloses a factual situation within the scope of the cited authorities. The *Steele* and *Tunstall* cases, *supra*, involved collective bargaining agreements that were discriminatory by their terms. There is no allegation in the present case that the collective bargaining agreement executed by Union and Railroad on June 1, 1942, and still in effect, discriminates against petitioners. They allege, instead, that discrimination has been effected by the conduct of the respondents under the agreement, and contend that this is sufficient, under the Supreme Court decisions, to give this Court jurisdiction. The alleged discrimination arises in connection with respondent Railroad's seniority assignments and promotions.

It appears from the record that the collective bargaining agreement provides that, as of the date of his hiring (whether before or after the date of

the Agreement), each member of the Union employed by Railroad shall be assigned a seniority date in a seniority group and class. There are four seniority groups: AA (selective runs covering streamliner trains), A (standard dining car runs), B ("challenger" runs covering the so-called challenger type trains which Railroad discontinued in 1947), and C (miscellaneous, covering such types as cafe-lounge cars). Each group contains certain seniority classes, such as: Class I (chef-caterer), Class II (chef), and Class III (second cooks, etc.). The Agreement further provides the system by which employees can advance to a higher seniority classification. Non-temporary and certain other types of positions which become vacant are announced by means of a bulletin. Bids are then accepted from employees desiring to be considered for such vacancies. Promotion and assignment are based on seniority, fitness and ability; fitness and ability being sufficient, a seniority prevails. Assignment to a non-temporary position of a seniority higher than that held gives to the employee so assigned such higher seniority classification and seniority date.

Petitioners allege that at the time of their original hiring only white members of the Union have been assigned to Group A, Classes I or II, while all Negro members have been assigned to Group B, Class III. They further allege that Railroad has refused to accept petitioners' bids for bulletined positions in higher seniority classifications, while filling such positions with Union's white members

having lesser seniority than have petitioners, and that Railroad has employed petitioners in Group A, Classes I and II positions without any criticism of their fitness and ability but without assigning them such seniority classification. Petitioners further charge that they have been so deprived of their seniority rights solely because they are Negroes and that this has been done by Railroad in connivance with the Union.

Turning now to the Steele and Tunstall cases, *supra*, upon which the petitioners ground their right of action, we find certain points of similarity and one of vital difference. In those cases the petitioners were Negro firemen employed by the respondent railroads, whose established practice was to promote only white firemen to engineers. The respondent Brotherhood, which excluded Negroes from its membership, was the authorized, exclusive bargaining representative of the craft of firemen employed by the railroads. The Brotherhood and the railroads entered into agreements restricting the seniority rights and the employment of Negro firemen, without giving them prior notice or opportunity to be heard.

The facts before this Court show that the respondent Union is the authorized, exclusive bargaining representative for all of Railroad's employees in its dining car and commissary service and that Negro employees are admitted to Union membership without discrimination. They further show the existence of a collective bargaining agreement between Union and Railroad but the record



contains no allegations that such agreement discriminates against petitioners. Since the petitioners have amended their original complaint twice and have filed a supplemental complaint, the absence of such allegations indicates that the agreement is not discriminatory. The Court believes that this difference between the facts in the instant case and those before the Supreme Court in the Steele and Tunstall cases, *supra*, is decisive on the issue of jurisdiction.

The Steele case, *supra*, holds that the Railway Labor Act imposes on the statutory representative of a craft (i.e., the authorized, exclusive bargaining representative) the duty to represent, in collective bargaining and in making contracts, all employees in the craft, without discrimination because of their race. The Tunstall case, *supra*, holds that the federal courts have jurisdiction to entertain a non-diversity suit for the violation of such duty by the statutory representative of a craft, since it is the federal statute, the Railway Labor Act, which condemns as unlawful such conduct by the representative.

The Railway Labor Act is not a Fair Employment Practices Act. It imposes no duty upon the employer to act without discrimination, nor do the Steele and Tunstall cases, *supra*, so hold. The decision of the Steele case affected the employer railroad only by the holding that the railroad could not take the benefits of a contract which the bargaining representative is prohibited by the statute from making (which is simply the statement of an ele-



mentary principle of contract law.) Such duty not to discriminate on the basis of race is imposed only on the statutory representative and only with respect to collective bargaining and the making of contracts. It is to be observed that while the facts of those cases were that the employer railroads practiced discrimination in the assignment and promotion of employees, and that the union Brotherhood practiced racial discrimination in its membership, the Supreme Court did not extend its ruling to include such practices in the prohibited area, but limited the rule to contracting and collective bargaining by the bargaining representative. Any doubt on this point was removed by the Supreme Court itself in *Graham v. Brotherhood of Locomotive Firemen and Enginemen*, . . . . . U. S. . . . . (November 7, 1949), where the Court, referring to the *Steele* and *Tunstall* cases, *supra*, said: "We held there that, as the exclusive statutory representative of the entire craft under the Railway Labor Act, the Brotherhood could not bargain for the denial of equal employment and promotion opportunities to a part of the craft upon grounds of race."

In the *Steele* and *Tunstall* cases, *supra*, the bargaining representative had made contracts which clearly violated this described duty. In the instant case neither the original complaint nor its amended forms contain any allegations that the respondent Union has violated this duty through collective bargaining or contracting. The sole allegation made

against the Union is that it has acted "in connivance" with the Railroad in the practices allegedly committed by the Railroad.

An examination of the word "connivance" shows its definition to be: "corrupt or guilty assent to wrongdoing, not involving actual participation in it, but knowledge of, and failure to prevent or oppose it," Webster's New International Dictionary; "an agreement or consent, indirectly given, that something unlawful shall be done by another," Bouvier's Law Dictionary; "Connivance with others may be committed by passive permission, or failure to prevent, or helping by not hindering when it is one's duty to prevent, or by negligence or voluntary oversight," *Brandon v. Holman*, 41 F (2d) 586, 588. This word cannot, without severe strain, be taken to mean "participation through contracting." Simply stated, the complaint alleges only that the Union has permitted, through failure to prevent, the existence of the alleged discriminatory practices of the Railroad.

As stated by the Supreme Court in *Terminal Assn. v. Trainmen*, 318 U. S. 1, 6: "The Railway Labor Act, like the National Labor Relations Act, does not undertake governmental regulations of wages, hours, or working conditions. Instead it seeks to provide a means by which agreement may be reached with respect to them. The national interest expressed by those Acts is not primarily in the working conditions as such. So far as the Act itself is concerned these conditions may be as bad as the employees will tolerate or be made as good as

they can bargain for. The Act does not fix and does not authorize anyone to fix generally applicable standards for working conditions. The federal interest that is fostered is to see that disagreement about conditions does not reach the point of interfering with interstate commerce." This Court, therefore cannot compel the statutory representative to bargain for certain standards of wages, hours, or working conditions, *Terminal Assn. v. Trainmen*, *supra*, nor, as here, racial equality in the classification of employees.

Thus there is a failure of the complaint to allege any violation of that duty as described by the *Steele* and *Tunstall* cases, *supra*, and there is an absence of any rights which have been violated by the Railroad. At most the complaint, in its original and amended form, alleges a violation of provisions of the Agreement. Any right of action, if one exists, is based on the alleged breach of the Agreement and does not arise under the Railway Labor Act, but only from the consequent contractual relations of the parties. *Gully v. First National Bank*, 299 U. S. 109; *Malone v. Gardner*, 62 F (2d) 15; *Barnhardt v. Western Maryland Ry. Co.*, 128 F (2d) 709; *Burke v. Union Pac. R. Co.*, 129 F. (2d) 844. Since this is not an action arising under any Act of Congress regulating commerce, the Court has no jurisdiction under 28 U. S. C. § 1337. Nor have the petitioners alleged facts necessary to give the Court Jurisdiction under the diversity of citizenship provision, 28 U. S. C. § 1332. The question of jurisdiction being decisive, it is not necessary to consider

the other motions and respondents' motion to dismiss the action must be granted. It is so ordered.

Dated: January 19th, 1950.

/s/ MICHAEL J. ROCHE,  
United States District Judge.

[Endorsed]: Filed January 19, 1950.

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[Title of District Court and Cause.]

NOTICE OF MOTION FOR LEAVE TO FILE  
AN AMENDED COMPLAINT

To Defendant Union Pacific Railroad Co., and to Edward C. Renwick, Esq., Its Attorney, and to Defendant Dining Car Employees Union Local 372 and to Messrs. Brobeck, Phleger & Harrison and Marion B. Plant, Esq., its Attorneys:

You and Each of You Will Please Take Notice that on Monday, February 13, 1950, at the hour of 10 a.m., or as soon thereafter as counsel can be heard, in the courtroom of the above-entitled Court, in the Post Office Building, 7th and Mission Streets, San Francisco, California, plaintiffs will move the above-entitled Court for leave to file an amended complaint in the form hereto attached and verified by plaintiff Thomas E. Hayes on January 25, 1950.

[Endorsed]: Filed January 31, 1950.

This motion will be based upon all the records, files, papers and proceedings herein and upon the

amended complaint, copy of which is hereto attached.

Dated: January 30, 1950.

GLADSTEIN, ANDERSEN,  
RESNER & SAWYER,

/s/ HAROLD M. SAWYER,  
Attorneys for Plaintiffs.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed January 31, 1950.

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In the District Court of the United States for  
the Northern District of California, Southern  
Division

Civil No. 28990-R

THOMAS E. HAYES, ALFRED ALLEN, BEN-  
NIE BATES, MAX D. BANKS, WALTER  
G. BASSETT, LEWIS BALLARD, CLAR-  
ENCE O. BUCKNER, JOHN BUKEY,  
HENRY BURNETT, RICHARD BURTON,  
WILLIE R. BURTON, JESS CLARK, M. G.  
CLAYTON, TOM D. CLERKLEY, RAY-  
MOND CORBIN, FLENOID CUNNING-  
HAM, JOHN H. DALE, WALTER DEAN,  
PHILIP DOOLITTLE, TED EATON, AL-  
BERT L. ELLINGTON, ROBERT M.  
EWING, LEROY FISHER, WAYMON  
FLEMING, FREDDIE FRANKS, LANG-  
STON GARDNER, JUNIOR N. GIL-  
BREATH, DENNIS HALL, ELBERT L.



HOLLIDAY, HORACE GIPSON, THOMAS JACKSON, ROBERT L. IVORY, MARION L. JOHNS, CHARLES JOHNSON, DONALD W. JOHNSON, EDWARD M. JONES, THEODORE R. JONES, HENRY O. JURY, ALBERT J. KENNEDY, EDMOND KING, JR., L. A. KING, RAASNETH KIRK, EMMETT L. LARK, ROBERT LILLARD, JOHN H. LOFTON, HURDO LEE LONGMIRE, JOEL MANNING, OSCEOLA MANNING, FREDERICK J. MAY, HAYWARD D. MAYNOR, WALTER M. MOORE, JOHN W. MORGAN, RICHARD O. MORRISON, BELFORD N. MOSES, LEONARD A. NELSON, LAWRENCE NOLBERT, OLIVER E. ODOM, CHARLES N. PANKEY, JR., DOUGLAS REDDEN, CHARLES M. RENFRO, LEONARD RIVERS, ISAIAH RIVERS, BENNIE ROBINSON, HARVEY H. ROBINSON, FRANK SANDERS, JUNIOR; JOHN J. SHANKS, JOHN A. SHAW, ABLERT SMITH, CHARLES R. SMITH, FRENCH L. SPENCER, THOMAS R. SPIKES, VERNON STAMPS, AMOS STONER, WILLIE M. SWANSON, KONWOOD THOMAS, HARVEY H. TRAMMELS, ROBERT C. TURNER, FRANK VALENTINE, LIVINGSTON S. VAUGHN, ROSCOE J. VAUGHN, JR., JAROME O. WATSON, HENRY D. WILEY, J. M. WILLIAMS, HENRY L. WILLIAMSON, CHARLES WINSTON,

ELIE WOODS, JR., PALL E. WOODS, and  
CHARLES P. WESTBROOKS, ON BE-  
HALF OF THEMSELVES, AND ON BE-  
HALF OF ALL OTHERS SIMILARLY  
SITUATED WHO MAY HEREAFTER BE-  
COME PARTIES PLAINTIFF TO THIS  
ACTION,

Plaintiffs,

vs.

UNION PACIFIC RAILROAD CO., a Corpora-  
tion;

DINING EMPLOYEES UNION LOCAL 372, a  
Voluntary Unincorporated Labor Organization;  
JAMES G. BARKDOLL, as District Director  
of Said Local 372 in the District of Los An-  
geles, State of California,

Defendants.

AMENDED COMPLAINT TO PREVENT, AND  
SECURE DAMAGES FOR, UNLAWFUL  
DISCRIMINATION UNDER THE RAIL-  
WAY LABOR ACT

As and for a First Cause of Action Against Defend-  
ants, Plaintiffs Allege:

I.

Plaintiffs named above, all of whom have au-  
thorized in writing the filing of this complaint in  
their behalf, bring this action on behalf of them-  
selves and on behalf of all other employees of de-

fendant Union Pacific Railroad Company (hereinafter referred to as "Railroad") similarly situated and who may hereafter become parties plaintiff to this action.

## II.

Plaintiffs bring this action (1) to prevent the discriminatory application by defendants, solely because of the race of plaintiffs, of seniority rules so as to deprive plaintiffs of their rights to exercise seniority in accordance with the terms of a collective bargaining agreement between defendants, (2) to recover damages from defendants for such discriminatory application of seniority rules, and (3) for a declaration that the practices of defendants complained of herein are without warrant in law.

## III.

Jurisdiction is conferred on the Court by §1337, 28 USCA (Judicial Code), giving the District Court original jurisdiction of any civil action arising under any act of Congress regulating commerce, and by §2 of the Railway Labor Act, 45 USCA §151 (a).

## IV.

At all times herein mentioned defendant Railroad was and now is a corporation engaged in interstate commerce, organized under the laws of a state unknown to plaintiffs, and duly and regularly admitted to do business in the State of California as a foreign corporation; and defendant Dining Car Employees Union Local 372 (hereinafter referred to as "Union") was and is a voluntary non-incor-

porated association and labor organization acting as the exclusive collective bargaining agent, pursuant to the terms and provisions of said Railway Labor Act, for plaintiffs and all other employees of Railroad engaged in dining car and commissary service, and functioning as such collective bargaining agent in the State of California and within the jurisdiction of this Court.

#### V.

The members of the Union are too numerous to permit of bringing them all before the Court as defendants, and jurisdiction of the person of Union is conferred upon the Court by service of process upon a member and officer of Union, namely James G. Barkdoll, District Chairman of Union for Los Angeles, California, District.

#### VI.

All of the plaintiffs are members of the Negro race and they are employees of the Railroad in its dining car and commissary service, or former employees of Railroad in said services who have, by reason of discriminatory practices by Railroad and Union, been deprived of their seniority rights and by reason thereof have either left or been discharged from their employment by Railroad, and plaintiffs at all times mentioned herein are either members of Union or former members thereof and entitled to representation by Union as their collective bargaining agent, without discrimination. As employees of Railroad, plaintiffs were at all times mentioned herein engaged in interstate commerce.

## VII.

At all times herein mentioned there was and now is in full force and effect a written collective bargaining agreement (hereinafter called the "Agreement") executed by Railroad and Union effective June 1, 1942.

## VIII.

In some instances plaintiffs had, prior to June 1, 1942, established an employment relationship with Railroad and were in such relationship on June 1, 1942, and the remainder of plaintiffs have since June 1, 1942, established an employment relationship with Railroad in accordance with the terms of Part I, Article III, Rule 14, subdivision (a) of said Agreement; and at the time when said employment relationship was created, plaintiffs were and each of them was accorded a seniority date in accordance with the terms of Part I, Article IV, Rule 17 in the seniority group and class designated by Railroad at the time when the employment relationship was created.

## IX.

At the time when the plaintiffs herein established an employment relationship with Railroad they were by Railroad, in connivance with Union, assigned to that certain seniority group known as group B, as defined in Part I, Article IV, Rule 19, of said Agreement, whereas white persons, at the time when they established an employment relationship with Railroad, were assigned by Railroad, with the connivance of Union, to seniority Group A, as defined in said Rule 19.



Moreover, plaintiffs at the time they established their employment relationship, were by Railroad, and in connivance with Union, assigned to the fourth seniority class, as defined in Part I, Article IV, Rule 20 of said Agreement, whereas white persons in the dining car service of Railroad were, at the time their employment relationship was created, assigned by Railroad, in connivance with Union, either to Class I, Class II, or Class III, as defined in said Rule 20; and by reason of the discriminatory treatment given to the said white persons, their pay and allowances were materially larger than the pay and allowances of plaintiffs, although there was no distinction between the ability and competence of plaintiffs and said white persons.

## X.

Under the terms of said Agreement, and particularly Part I, Article IV, Rule 17, subdivision (c), it was impossible for plaintiffs to obtain a seniority date and accumulate the seniority in a higher class than that to which they were assigned at the inception of their employment relationship, except in accordance with the terms of said Rule 17, which provides that an employee will be accorded a seniority date in a higher group or class in which he has not previously acquired a seniority date only upon assignment by bulletin to a bulletin position or vacancy in such higher group or class and the seniority date so accorded will be the date of assignment and will also be accorded in all intermediate groups and classes, and an employee assigned to a position in a

higher group or class will retain the seniority dates held in all lower groups and classes and continue to accumulate seniority therein.

By reason of the above-described discrimination against Negroes practiced by Railroad, in connivance with Union, plaintiffs have, since their initial employment by Railroad, been unable to build up seniority in seniority groups and classes higher than those in which they were originally given seniority dates, and hence never, as long as they remain in Railroad's employ, will be able to exercise seniority rights in higher groups and classes in competition with white employees.

## XI.

Not only has Railroad, in connivance with Union, denied seniority rights to plaintiffs, as alleged in paragraph IX hereof but has, at the same time, in connivance with Union, employed plaintiffs in seniority Group A, as defined in such Rule 19, and in Classes I, II, and III, as defined in said Rule 20, but without assigning to plaintiffs any seniority date in said groups and classes, and has thereby, in connivance with Union, prevented plaintiffs from from accumulating seniority in said groups and classes.

## XII

That said agreement provided in Part I, Article V, Rule 26 thereof, that promotion shall be based upon seniority, fitness and ability, fitness and ability being sufficient, seniority shall prevail; but with reference to these plaintiffs, Railroad, in connivance with

Union, has denied plaintiffs seniority in higher classes and groups while at the same time has employed plaintiffs in such higher classes and groups for long periods of time without any criticism of their fitness and ability, and the reason for the said discrimination against plaintiffs was and is because they are Negroes, and it is and has been the purpose of Railroad and Union to drive plaintiffs and all other Negroes from service in the employment of Railroad in its dining car department, except in inferior groups and classes, and that this policy was devised and has been enforced with express malice against plaintiffs, and for the purpose of oppressing them.

### XIII

Union is controlled by persons wholly in sympathy with the said policy of discrimination against plaintiffs, and notwithstanding repeated protests of plaintiffs and their representatives, and requests to take action against Railroad, Union has utterly failed, refused and neglected to take any such action, and Railroad and Union have together failed, neglected and refused to refrain from said discriminatory practices, and plaintiffs have no administrative remedy save and except before such bodies of Union and Railroad as have already acquiesced in and perpetrated said discriminatory practices; and without the interposition of this Court, and without the exercise of its equity jurisdiction in the premises, plaintiffs have no plain, speedy or adequate remedy at law.

## XIV

The employment records of plaintiffs are wholly within the possession and control of Railroad and without discovery of said records plaintiffs are unable to calculate and state the damages which they and each of them have suffered by reason of the aforesaid discriminatory practices within four years immediately preceding the filing of this complaint.

Wherefore, plaintiffs pray, etc.

As and for a Second Cause of Action Against Defendants, plaintiffs allege:

## I.

Incorporate by reference, as though here set forth at length, all the allegations contained in paragraphs I, II, III, IV, V, VI, VII and VIII of the first cause of action herein.

## II.

Prior, however, to the effective date of the said agreement, defendants Railroad and Union had, by mutual understanding and verbal agreement, conspired together to discriminate against Negro employees in the dining car department of Railroad by arbitrarily assigning to Negroes, when first employed by Railroad, seniority dates in Group B, as defined in Part I, Article IV, Rule 19, of said Agreement, and in Classes 4 and 5, as defined in Part I, Article IV, Rule 20 of said Agreement, whereas white persons when first employed were arbitrarily assigned seniority dates in Group A as defined in said Rule 19, and in Classes 2 and 3, as

defined in said Rule 20; and by reason of the discrimination thus practiced by Railroad and Union against Negroes and in favor of white persons, the pay and allowances of the latter were materially larger than the pay and allowances of the former, although the Negroes were no less competent, able and experienced than the white persons. The basis for the said discrimination against the Negroes was solely because of their race.

The said Agreement did not provide any standard or yardstick by which it could be determined in which of the several seniority groups and classes new employees should be given seniority dates.

But the said agreement was negotiated in the light of the existing practice, and the existing practice was, by Railroad and Union during said negotiations and after the effective date of the Agreement, adopted by verbal agreement and understanding between Railroad and Union, as the method of determining seniority dates in the several groups and classes defined in said Rules 19 and 20; and by this adoption by Railroad and Union, the said Agreement was modified in violation of the Railway Labor Act and for the purpose of discriminating against Negro employees in the dining car department of Railroad; and thus modified, the entire contract was, has been ever since its effective date, and now is, discriminatory against Negroes in the employ of defendant Railroad in its dining car department.

That the whole purpose of incorporating in the said Agreement Rules 19 and 20, was to give recognition to the said discriminatory practice which had



previously existed prior to the effective date of said Agreement, and that the said Agreement was negotiated and entered into by Railroad and Union for the express purpose of perpetuating the said discriminatory practice and using the same as the standard or yardstick for the determination in which of the several seniority groups and classes new employees should be given seniority dates.

That in accordance with the said discriminatory agreement, plaintiffs at the time they established their employment relationship, were by Railroad, and pursuant to said Agreement with Union, assigned to that certain seniority group known as B, as defined in said Rule 19, whereas white persons were at the time when they established an employment relationship, assigned by Railroad pursuant to said Agreement, to seniority Group A, as defined in said Rule 19.

Moreover, plaintiffs at the time they established their employment relationship, were by Railroad, pursuant to said Agreement with Union, assigned to the fourth and fifth seniority classes, as defined in said Rule 20, whereas white persons in the dining car service of Railroad were at the time their employment relationship was created, assigned by Railroad, pursuant to said Agreement with Union, either as Class 2 or Class 3 employees, as defined in said Rule 20; and by reason of the said discriminatory treatment, and in accordance with the said discriminatory Agreement, the pay and allowances of white persons were materially larger than the pay and allowances of plaintiffs, although there was no dis-

inction between the ability and competence of plaintiffs and said white persons.

### III.

Under the terms of said Agreement, and particularly Part I, Article IV, Rule 17, subdivision (c), it was impossible for plaintiffs to obtain a seniority date and accumulate the seniority in a higher class than that to which they were assigned at the inception of their employment relationship, except in accordance with the terms of said Rule 17, which provides that an employee will be accorded a seniority date in a higher group or class in which he has not previously acquired a seniority date only upon assignment by bulletin to a bulletin position or vacancy in such higher group or class and the seniority date so accorded will be the date of assignment and will also be accorded in all intermediate groups and classes, and an employee assigned to a position in a lower group or class will retain the seniority dates held in all lower groups and classes and continue to accumulate seniority therein.

However, plaintiffs have been and always will be, as long as they remain in the employ of Railroad, at a serious disadvantage in competition with white persons because they, as a result of the said discriminatory Agreement, will be unable to compete with white employees in the dining car service of Railroad and build up seniority in higher seniority groups and classes than those to which they were initially assigned; whereas white persons employed

initially in higher groups and classes, will from the very day of their first employment, begin to build up seniority in such higher groups and classes to such an extent that the Negro employees have not been, are not, and will never be able to compete with the said white employees with respect to bulletined positions in the higher seniority groups and classes.

#### IV.

Incorporate by reference, as though here set forth at length, all the allegations contained in paragraphs XII and XIII of the first cause of action herein. .

#### V.

The employment records of plaintiffs are wholly in the possession and control of Railroad, and without discovery of said records, plaintiffs are unable to calculate and state the damages which they and each of them have suffered by reason of the premises within four years immediately preceding the filing of this complaint.

Wherefore, plaintiffs pray for the following relief:

(1) For a declaratory judgment that the said discriminatory Agreement negotiated by Union, as sole collective bargaining agent for plaintiffs, was and is illegal and a violation by Union of its responsibilities as sole collective bargaining agent, and that Railroad cease and desist from the discrimination permitted by said contract against said plaintiffs,

and further for an order according plaintiffs, and each of them, such seniority dates in such class or classes and group or groups as they would have been entitled to had there been no discrimination against them by defendants.

(2) For a temporary restraining order, restraining Railroad and Union from engaging in discrimination in the application of seniority rules to plaintiffs until the further order of this Court.

(3) For an injunction pendente lite restraining Railroad and Union from engaging in discrimination in the application of seniority rules to plaintiffs until the further order of this Court.

(4) For a permanent injunction forever restraining Railroad and Union from engaging in discrimination in the application of seniority rules to plaintiffs.

(5) For a reference to a United States Commissioner or other authorized officer to take testimony and report to the Court upon the damages sustained by Plaintiffs and each of them by reason of said discriminatory practices in the application of seniority rules to plaintiffs.

(6) For a judgment for such damages thus ascertained by said Commissioner or other authorized person.

(7) For a decree for punitive or exemplary damages on behalf of each of the plaintiffs entitled to re-

cover herein in such amount as to the Court may seem appropriate.

(8) For costs of suit and disbursements incurred herein, together with interest on any damages allowed plaintiffs from the date when they should have been accorded seniority rights under the terms of said Agreement, and for the allowance of a reasonable attorney's fee.

(9) For such other and further relief as to this Court may seem meet and just in the premises.

Dated: January 25, 1950.

GLADSTEIN, ANDERSEN,  
RESNER & SAWYER,

/s/ HAROLD M. SAWYER,  
Attorneys for Plaintiffs.

State of California,

City and County of San Francisco—ss:

Thomas E. Hayes, being first duly sworn, deposes and says:

That he is one of the plaintiffs named in the within and foregoing first amended complaint; that he makes this verification for and on behalf of all plaintiffs herein; that he has read said complaint and knows the contents thereof; that the same is true of his own knowledge except as to matters



therein stated upon information or belief, and as to those matters he believes it to be true.

/s/ THOMAS E. HAYES.

Subscribed and sworn to before me this 25 day of January, 1950.

[Seal] AGNES QUAVE,  
Notary Public in and for the City and County of  
San Francisco, State of California.

My Commision Expires January 14, 1953.

Affidavit of Service by Mail attached.

[Endorsed]: Filed January 31, 1950.

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[Title of Court of Appeals and Cause.]

Civil No. 28990-R

AMENDED NOTICE OF MOTION TO SET  
ASIDE ORDER OF DISMISSAL AND FOR  
LEAVE TO FILE AN AMENDED COM-  
PLAINT.

To Defendant Union Pacific Railroad Co., and to  
Edward C. Renwick, Esq., its Attorney, and to  
Defendant Dining Car Employees Union Local  
372 and to Messrs. Brobeck, Phleger & Harrison  
and Marion B. Plant, Esq., its Attorneys:

You and each of you will please take notice that  
on Monday, February 13, 1950, at the hour of 10  
a.m., or as soon thereafter as counsel can be heard

in the courtroom of the above-entitled Court, Post Office Building 7th and Mission Streets, San Francisco, California, plaintiffs will move the Court to set aside the order of dismissal made and entered herein on January 19, 1950, and for leave to file an amended complaint in the form attached to a similar notice filed herein January 31, 1950, verified by Thomas E. Hayes on January 25, 1950.

This amended notice is given because of the inadvertent omission in the said notice filed January 31, 1950, of any reference to the said order of dismissal of January 19, 1950, and the motion will be made upon all the records, files, papers and proceedings herein and upon the said form of amended complaint.

Dated: January 31, 1950.

GLADSTEIN, ANDERSEN,  
RESNER & SAWYER,

/s/ HAROLD M. SAWYER,  
Attorneys for Plaintiffs.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed February 2, 1950.

District Court of the United States, Northern District of California, Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in this City and County of San Francisco, on Monday, the 13th day of February, in the year of our Lord one thousand nine hundred and fifty.

[Title of Cause.]

ORDER DENYING MOTION TO SET ASIDE  
JUDGMENT OF DISMISSAL, AND FOR  
LEAVE TO FILE AMENDED COMPLAINT

Case came on for hearing of motion to set aside judgment of dismissal and for leave to file amended complaint. Harold Sawyer, Esq., for plaintiff, Edward Renwick, Esq., for Union Pacific Railroad Company, and Marion B. Plant, Esq., for the Dining Car Employees Union, were present. After hearing counsel for respective parties it is Ordered that the motion to set aside judgment of dismissal and for leave to file amended complaint be denied. Thereupon, the judgment of dismissal was signed and filed.

In the Southern Division of the United States District Court for the Northern District of California.

No. 28990-R

THOMAS E. HAYES, on Behalf of Himself and All Others Similarly Situated Who May Come in and Prosecute This Action and Contribute to the Costs Thereof,

Plaintiffs,

vs.

UNION PACIFIC RAILROAD CO., a Corporation, and DINING CAR EMPLOYEES UNION LOCAL 372, a Voluntary Unincorporated Labor Organization; JAMES G. BARKDOLL, as District Director of Said Local 372 in the District of Los Angeles, State of California,

Defendants.

### JUDGMENT OF DISMISSAL

The defendants, Union Pacific Railroad Company, a corporation, and Dining Car Employees Union Local 372, a voluntary unincorporated labor organization, having each moved to dismiss the above-entitled action upon the ground of failure to state a claim upon which relief can be granted and upon the ground of lack of jurisdiction over the subject matter, and said motions having come on duly and regularly for hearing, the parties were given reasonable opportunity to present all pertinent material; and it appearing to the Court after consider-

ing the complaint, the amendments thereto, the affidavits filed by the parties, and the statements of counsel, that there is no genuine issue as to any material fact and that the said defendants are entitled to a judgment of dismissal as a matter of law, and the Court having ordered that said motions be granted upon all grounds above stated,

Now, therefore, it is ordered, adjudged and decreed that the said action be, and the same hereby is, dismissed, and that the said defendants, Union Pacific Railroad Company, a corporation, and Dining Car Employees Union Local 372, a voluntary unincorporated labor organization, have and recover of plaintiffs their costs herein incurred.

Dated this 13th day of February, 1950.

/s/ MICHAEL J. ROCHE,  
District Judge.

Approved as to Form as Provided by Rule 5 (a):

/s/ EDWARD C. RENWICK,  
Attorney for Defendant, Union Pacific Railroad  
Company, a Corporation.

BROBECK, PHLEGER &  
HARRISON,  
Attorneys for Defendant, Dining Car Employees  
Union Local 372, a Voluntary Unincorporated  
Labor Organization.

Receipt of Copy Acknowledged.

Lodged January 31, 1950.

[Endorsed]: Filed February 13, 1950.



[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice is hereby given that Thomas E. Hayes, Alfred Allen, Bennie Bates, Max D. Banks, Walter G. Bassett, Lewis Ballard, Clarence O. Buckner, John Bukey, Henry Burnett, Richard Burton, Willie R. Burton, Jess Clark, M. G. Clayton, Tom D. Clerkley, Raymond Corbin, Flenoid Cunningham, John H. Dale, Walter Dean, Philip Doolittle, Ted Eaton, Albert L. Ellington, Robert M. Ewing, Leroy Fisher, Waymon Fleming, Freddie Franks, Langston Gardner, Junior N. Gilbreath, Dennis Hall, Elbert J. Holliday, Horace Gipson, Thomas Jackson, Robert L. Ivory, Marion L. Johns, Charles Johnson, Donald W. Johnson, Edward M. Jones, Theodore R. Jones, Henry O. Jury, Albert J. Kennedy, Edmond King, Jr., L. A. King, Raasneth Kirk, Emmett L. Lark, Robert Lilliard, John H. Lofton, Hurdo Lee Longmire, Joel Manning, Osceola Manning, Frederick J. May, Hayward D. Maynor, Walter M. Moore, John W. Morgan, Richard O. Morrison, Belford N. Moses, Leonard A. Nelson, Lawrence Nolbert, Oliver E. Odom, Charles N. Pankey, Jr., Douglas Redden, Charles M. Renfro, Leonard Rivers, Isaiah Rivers, Bennie Robinson, Harvey H. Robinson, Frank Sanders, Junior; John J. Shanks, John A. Shaw, Albert Smith, Charles R. Smith, French L. Spencer, Thomas R. Spikes, Vernon Stamps, Amos Stoner, Willie M. Swanson, Konwood Thomas, Harvey H. Trammels, Robert

C. Turner, Frank Valentine, Livingston S. Vaughn, Roscoe J. Vaughn, Jr., Jarome O. Watson, Henry D. Wiley, J. M. Williams, Henry L. Williamson, Charles Winston, Elie Woods, Jr., Pall E. Woods, and Charles P. Westbrooke, hereby appeal to the Circuit Court of Appeals for the Ninth Circuit, from the order made and entered herein on the 19th day of January, 1950, dismissing the complaint herein for lack of jurisdiction, and from the order made and entered herein on the 13th day of February, 1950, denying appellants' motion to set aside the said order of dismissal of January 19, 1950, and to permit the filing of an amended complaint, and from the final judgment of dismissal made and entered herein on the 13th day of February, 1950.

Dated: February 16, 1950.

GLADSTEIN, ANDERSEN,  
RESNER & SAWYER,

By /s/ HAROLD M. SAWYER,  
Attorneys for Plaintiffs and  
Appellants.

[Endorsed]: Filed February 17, 1950.

In the Southern Division of the United States  
District Court for the Northern District of  
California. .

No. 28990-R

THOMAS E. HAYES, on Behalf of Himself and  
All Others Similarly Situated Who May Come  
in and Prosecute This Action and Contribute  
to the Costs Thereof,

Plaintiff,

vs.

UNION PACIFIC RAILROAD CO., a Corpora-  
tion, and DINING CAR EMPLOYEES UN-  
ION LOCAL 372, a Voluntary Unincorpo-  
rated Labor Organization, JAMES G. BARK-  
DOLL, as District Director of Said Local 372  
in the District of Los Angeles, State of Cali-  
fornia,

Defendants.

Argument

October 24 and 25, 1949

Before: Hon. Michael J. Roche,  
Judge.

## REPORTER'S TRANSCRIPT

Appearances:

For the Plaintiff

HAROLD M. SAWYER, ESQ.

For the Defendant Local 372

MARION B. PLANT, ESQ.,  
SAMUEL L. HOLMES, ESQ.

For the Defendant Union Pacific

EDWARD C. RENWICK, ESQ.,  
JAMES A. WILCOX, ESQ.

\* \* \*

Mr. Sawyer: May it please the court, there have been several arguments advanced, some material, some rather trivial, but I would like to address myself first to the subject of jurisdiction, because if this court has no jurisdiction that is the end of it.

I will say in the first instance that the cause of action which we attempted to plead is based exclusively upon the authority of the Steele and Tunstall cases, both decided in 1944, and there is no later case dealing with this issue. The Steele case was started against the Louisville & Nashville Railroad, and the Tunstall case was against a railroad and the Brotherhood of Locomotive Engineers. In fact, the brotherhood was joined in both cases. Now, the facts out of which those two cases arose are exceedingly significant. If we do not bring ourselves within the principle of the Steele and the Tunstall cases I am quite prepared to admit that we have no authority behind us.

\* \* \*

Mr. Sawyer: Will you pardon me a minute? Alabama. The Supreme Court issued certiorari to

the Supreme Court of the state. The Tunstall case arose in a Virginia District Court. It was dismissed by the trial court, district court, for lack of jurisdiction. That holding was examined by the Circuit Court of Appeals for the Fourth Circuit and again the Supreme Court issued certiorari to the Circuit Court of Appeals. The decision in both cases is the same. Both cases arise out of the same set of facts.

In the Steele case suit was brought by a locomotive fireman against his employer, Louisville & Nashville Railroad Co., the Brotherhood of Locomotive Firemen & Engineers, and certain individuals representing the brotherhood. "The petitioner, who was a negro, was a locomotive fireman in the employ of the respondent railway, suing on his own behalf and that of his fellow employees, who, like petitioner, are negro firemen employed by the railroad. Respondent brotherhood was a labor organization and the exclusive bargaining representative of the craft of firemen employed by the railroad and recognized by it as such and the members of the craft. The majority of the firemen employed by the railroad are white and are members of the brotherhood, but a substantial minority are negroes who, by the constitution and ritual of the brotherhood, are excluded from its membership."

May I pause there to point out that in the Hayes case, the case at bar, there is no exclusion of negroes from the union, but that distinction is not decisive.



Mr. Sawyer: Let me explain it. The practice has been—then I will say the changes only came through the pressures which led to this lawsuit. The practice has been uniformly to employ all negroes, at the time they are initially employed in group B, in class 3 or 4, whereas at the same time of initial employment the practice has been to employ all whites in group A and in classes 1 and 2. Now look at the consequences of that. In the first place, this collective bargaining agreement shows how you get an employment relation, and you get it by performing service in any group or class for 90 days continuously, and your seniority date is the date that you first went to work. With the negroes all employed in group B and the whites all employed in group A, the seniority problems presented by this discrimination are almost insuperable. Here is the way, under the agreement, you gain seniority in any higher group or class. Rule 22:

“All new positions or vacancies shall be promptly bulletined on bulletin boards in all terminals affected. Positions of 30 days or less duration shall be considered temporary——”

Mr. Renwick said today there was no violation because we didn't accumulate seniority while filling temporary positions. There is no issue there at all. We agree.

“——and may be filled without bulletining. Positions of indefinite duration and/or known to be more than 30 days shall be bulletined, as temporary positions and again bulletined as soon as known to

be permanent," so there is no quarrel about the failure to accumulate seniority on temporary positions unless an accumulation of temporary positions is a device for tying up accumulation of seniority.

The Court: Is there any thought that there is?

Mr. Sawyer: Is there any thought of that?

The Court: Yes.

Mr. Sawyer: I can't tell you. It has been suggested, but discrimination takes so many forms.

The Court: That is the reason I make the inquiry, so that I will follow it.

Mr. Sawyer: Yes, I am glad you do.

All right, let's take a negro who has been employed and given seniority date in class B. There comes along a vacancy or a new position at a higher group, class A. He can bid on it, but he can't get a job in competition with a white man who has already accumulated more seniority than the negro has in the group in which the bulletined position is.

The Court: That is as it should be, is it not?

Mr. Sawyer: I don't think so.

The Court: Why?

Mr. Sawyer: Because that inability is a limitation imposed on the negro because of the discriminatory policy of assigning him to class B at the initial hiring and the white man in class A.

The Court: You indicated also he had seniority, the white man.

Mr. Sawyer: Because the reason for it is, suppose the white man and the negro were hired the same day——

The Court: Yes.

Mr. Sawyer: —and the negro worked a year and the white man worked a year, then the negro wants to bid on a group A position, he can't defeat the white man who has got group A seniority of a year.

The Court: Why?

Mr. Sawyer: Because the white man was a member of the group A at the first, and the negro was employed in group B. It is that initial discrimination that is the key to this whole case.

\* \* \*

The Court: Is this Stone speaking?

Mr. Renwick: Yes, your Honor. And certain cases are cited.

“Without attempting to mark the allowable limits of differences in terms of contracts based on differences of conditions to which they apply, it is enough for present purposes to say that the statutory power to represent a craft and to make contracts as to wages, hours and working conditions does not include the authority to make among members of the craft discriminations not based on such relevant differences. Here the discriminations based on race alone are obviously irrelevant and invidious.”

That was the narrow holding of this case, but a difference in seniority based solely upon race was prohibited, not that there could not be differences in seniority, providing an agreement which treated different members of a class differently.

Mr. Sawyer: I have never disputed that.

The Court: What is that?

Mr. Sawyer: I have never disputed that. I only urge the distinction could not be based solely on race.

Mr. Renwick: I am pointing out that without discrimination there isn't anything in this case upon which the court's jurisdiction can be based.

The Court: Counsel concedes that.

Mr. Sawyer: I certainly do.

\* \* \*

### CERTIFICATE OF REPORTER

I, Kenneth J. Peck, Official Reporter, certify that the foregoing pages are a true and correct transcript of the matter therein contained as reported by me and thereafter reduced to typewriting to the best of my ability.

/s/ KENNETH J. PECK.

[Endorsed]: Filed December 29, 1949.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD  
ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing and accompanying documents, listed below, are the originals filed in this Court, or a true and correct copy of an order entered on the minutes of this Court, in the above-entitled case, and that they constitute the Record on Appeal herein, as designated by the parties, to wit:

Complaint to Prevent, and Secure Damages for, Unlawful Discrimination Under the Railway Labor Act.

Affidavit of H. A. Hansen.

Affidavit of Steven R. Auguston.

Motions to Dismiss, to Strike, to Sever Claims and for a Definitive Statement.

Motions to Dismiss for More Definite Statement and to Strike.

Affidavit of H. I. Norris.

Affidavit of Thomas E. Hayes, One of Plaintiffs Herein, in Opposition to the Motions of Defendant, Union Pacific Railroad and Defendant Dining Car Employees' Union, Local 372.

Affidavit of H. A. Hansen, Addressed to the 15-page Affidavit of Thomas E. Hayes, Verified on October 15, 1949—Exhibits attached.



Affidavit of H. A. Hansen.

Affidavit of Thomas E. Hayes Addressed to the Nine-Page Affidavit of H. A. Hansen, Verified October 21, 1949.

Affidavit of J. Hansink.

Affidavit of H. A. Hansen Addressed to the 7-page Affidavit of Thomas E. Hayes Verified on October 21, 1949—Exhibits attached.

Opinion.

Notice of Motion for Leave to File an Amended Complaint and Amended Complaint to Prevent, and Secure Damages for, Unlawful Discrimination Under the Railway Labor Act Verified by Thomas E. Hayes, January 25, 1950.

Amended Notice of Motion to Set Aside Order of Dismissal and for Leave to File an Amended Complaint.

Minute Order of February 13, 1950—Order Denying Motion to Set Aside Judgment of Dismissal, and for Leave to File Amended Complaint.

Judgment of Dismissal.

Notice of Appeal.

Designation of the Portions of the Record and Proceedings to Be Contained in the Record on Appeal and Statement of Points to Be Relied Upon on Appeal by Appellants.

Designation by Appellee Union Pacific Railroad Company of Additional Portions of Record and Proceedings to Be Included in the Record on Appeal.

Counter Designation of Record by Dining Car Employees' Union, Local 372.

Reporter's Transcript for October 24 and 25, 1949—Argument.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 23rd day of March, A.D. 1950.

C. W. CALBREATH,  
Clerk.

[Seal]: By /s/ M. E. VAN BUREN,  
Deputy Clerk.

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[Endorsed]: No. 12509. United States Court of Appeals for the Ninth Circuit. Thomas E. Hayes, on behalf of himself and all others similarly situated, Appellants, vs. Union Pacific Railroad Co., a Corporation, and Dining Car Employees Union Local 372, a voluntary unincorporated labor organization; James G. Barkdoll, as District Director of said Local 372 in the District of Los Angeles, State of California, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed March 23, 1950.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

In the United States Court of Appeals  
for the Ninth Circuit

Case No. 12,509

THOMAS E. HAYES, et al.,

Appellants,

vs.

UNION PACIFIC RAILROAD COMPANY, etc.,  
et al.,

Appellees.

STATEMENT OF POINTS UPON WHICH  
APPELLANTS INTEND TO RELY

The points upon which appellants intend to rely on this appeal are:

1. The original complaint filed herein on July 6, 1949, stated a cause of action within the jurisdiction of the court below, and that court should not have dismissed the same for lack of jurisdiction.

2. The proposed amended complaint, verified by Thomas E. Hayes January 25, 1950, states in two counts a cause of action within the jurisdiction of the court below, and that court should have permitted appellants to file the same.

3. The court below should not have refused to

set aside and vacate its order of dismissal for lack of jurisdiction.

Dated: March 28, 1950.

GLADSTEIN, ANDERSEN,  
RESNER & SAWYER,

By /s/ HAROLD M. SAWYER,  
Attorneys for Appellants.

Affidavit of Service by Mail attached.

[Endorsed]: Filed March 28, 1950.

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[Title of Court of Appeals and Cause.]

DESIGNATION OF ALL OF THE RECORD  
WHICH IS MATERIAL TO THIS APPEAL

To the Clerk of the Above-Entitled Court:

Appellants hereby designate all of the record which is material to the consideration of this appeal:

1. Complaint filed herein July 6, 1949, omitting interrogatories attached thereto.
2. Motion of defendant Union Pacific Railroad Company to dismiss, for more definite statement, and to strike, dated September 9, 1949.
3. Motion of defendant Dining Car Employees Union Local 372 to dismiss, to strike, to sever claims, and for more definite statement, undated.
4. Opinion of the District Court and order of

dismissal of complaint for lack of jurisdiction, filed January 19, 1950.

5. Amended Notice of Motion to set aside dismissal order of January 19, 1950, and to permit filing of amended complaint, filed herein February 2, 1950.

6. Amended complaint verified by Thomas E. Hayes January 25, 1950.

7. Order of the District Court made and entered February 13, 1950, denying motion to set aside dismissal order of January 19, 1950, and to file amended complaint.

8. Judgment of dismissal made and entered herein February 13, 1950.

Dated: March 28, 1950.

GLADSTEIN, ANDERSEN,  
RESNER & SAWYER,

By /s/ HAROLD M. SAWYER,  
Attorneys for Appellants.

Affidavit of Service by Mail attached.

[Endorsed]: Filed March 28, 1950.



[Title of Court of Appeals and Cause.]

DESIGNATION BY APPELLEE UNION PACIFIC RAILROAD COMPANY OF ADDITIONAL PARTS OF THE RECORD TO BE PRINTED.

To the Clerk of the Above-Entitled Court:

The Appellee Union Pacific Railroad Company hereby designates the following parts of the record to be printed, in addition to those heretofore designated by Appellants, which are material to the consideration of the Appeal:

1. Affidavit of H. A. Hansen notarized August 26, 1949, filed August 29, 1949;
2. Affidavit of Steven R. Auguston notarized September 14, 1949, filed September 14, 1949;
3. Affidavit of H. I. Norris notarized September 10th, 1949, filed September 15, 1949;
4. Affidavit of Thomas E. Hayes notarized October 15th, 1949, filed October 19, 1949;
5. Affidavit of H. A. Hansen notarized October 21, 1949, filed October 24, 1949;
6. Affidavit of Thomas E. Hayes notarized October 31st, 1949, filed November 7, 1949;
7. Affidavit of J. Hansink notarized November 11, 1949, filed November 15, 1949;
8. Affidavit of H. A. Hansen notarized November 12, 1949, filed November 15, 1949;

9. The following portions of the Reporter's Transcript of the hearing before District Judge Michael J. Roche October 24th and 25th, 1949:

- a. Lines 6-22, inclusive, page 50;
- b. Line 3, page 51, to line 4, page 52, inclusive;
- c. Line 12, page 72, to line 1, page 75, inclusive;
- d. Line 20, page 99, to line 21, page 100, inclusive.

Dated: April 4, 1950.

T. W. BOCKES,  
W. R. ROUSE,  
ELMER COLLINS,  
JAMES A. WILCOX,  
E. E. BENNETT,  
EDWARD C. RENWICK,  
MALCOLM DAVIS,  
W. J. SCHALL,

By /s/ EDWARD C. RENWICK,  
Attorneys for Appellee, Union Pacific Railroad  
Company.

Affidavit of Service by Mail attached.

[Endorsed]: Filed April 5, 1950.

[Title of Court of Appeals and Cause.]

DESIGNATION BY APPELLEE DINING CAR  
EMPLOYEES UNION, ETC., OF ADDI-  
TIONAL PARTS OF THE RECORD

To the Clerk of the Above-Entitled Court:

The Appellee Dining Car Employees Union, etc., hereby designates the following parts of the record, in addition to those heretofore designated by Appellants, which are material to the consideration of the Appeal:

1. Affidavit of H. A. Hansen filed August 29, 1949;
2. Affidavit of Steven R. Auguston filed September 14, 1949;
3. Affidavit of H. I. Norris notarized September 10, 1949, and filed September 15, 1949;
4. Affidavit of Thomas E. Hayes filed October 19, 1949;
5. Affidavit of H. A. Hansen filed October 24, 1949;
6. Affidavit of Thomas E. Hayes filed November 7, 1949;
7. Affidavit of J. Hansink filed November 15, 1949;
8. Affidavit of H. A. Hansen filed November 15, 1949.

9. The following portions of the Reporter's Transcript of the hearing before District Judge Michael J. Roche, October 24 and 25, 1949;

- a. Lines 6-22, inclusive, page 50;
- b. Lines 2-4, inclusive, page 52;
- c. Line 12, page 72, to line 1, page 75.

Dated: April 5th, 1950.

BROBECK, PHLEGER &  
HARRISON,

/s/ MARION B. PLANT,  
Attorneys for Dining Car  
Employees Union, etc.

Affidavit of Service by Mail attached.

Receipt of copy acknowledged.

[Endorsed]: Filed April 6, 1950.